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NHTSA AUTHORIZATION AND MEANS OF IMPROVING HIGHWAY SAFETY

HEARING

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

NINETY-NINTH CONGRESS

FIRST SESSION

ON

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION
AUTHORIZATIONS AND MEANS OF IMPROVING HIGHWAY SAFETY

FEBRUARY 21, 1985

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NHTSA AUTHORIZATION AND MEANS OF IMPROVING HIGHWAY SAFETY

THURSDAY, FEBRUARY 21, 1985

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The committee met, pursuant to notice, at 10:10 a.m., in room SR-253, Russell Senate Office Building, Hon. John C. Danforth (chairman of the committee) presiding.

Staff members assigned to this hearing: Karen Phillips, professional staff member and Loretta Dunn, minority staff counsel.

OPENING STATEMENT BY THE CHAIRMAN

The CHAIRMAN. This is a hearing on the authorization of the National Highway Traffic Safety Administration and generally on means of improving highway safety.

This morning the Commerce Committee will be examining the activities of the Department of Transportation's National Highway Traffic Safety Administration [NHTSA]. Our aim is twofold. First, we must determine the appropriate reauthorization levels for the funding of NHTSA programs during fiscal years 1986 and 1987. Second, and more important, we must identify specific actions that can be taken by Congress, NHTSA, and others, to significantly improve highway safety.

It is clear that NHTSA has sought to promote certain aspects of highway safety during the past 2 years. NHTSA's decisions to allow auto manufacturers to install antilacerative windshields in cars and to require installation of high-mounted rear stoplamps on autombiles demostrate this point. The Department of Transportation's [DOT] occupant crash protection standard issued last year also shows Transportation Secretary Elizabeth Dole's personal commitment to safety.

Nevertheless, I remain concerned about several important aspects of highway safety and consumer protection. I find it difficult to understand why the Government mandates a bumper standard which provides for a basically ornamental bumper. I do not understand why NHTSA cannot issue a standard to improve motor vehicle side impact protection. I do not understand why we continue to experience tragic accidents with unsafe cars, such as the Ford transmission cases, without some decisive action being taken. And lastly, I am deeply concerned that the current rush by States to enact mandatory seat belt use laws in the aftermath of DOT's occupant crash protection standard will, in the long run, not promote highway safety, but instead prevent passive restraints from ever becoming available to American consumers on a widespread basis.

Within the next few days, I plan to introduce legislation to address a number of critical highway safety issues, specifically, airbags, bumpers, side impact protection, tamper-resistant odometers, consumer information on the crashworthiness of new cars, and gray market automobile imports. I believe these bills will make a significant positive contribution toward improving safety and reducing deaths ind injuries on our Nation's highways.

I look forward to hearing from our witnesses today on the status of highway safety efforts and learning more about what we can do in this vital area.

Senators Goldwater and Hollings could not make the hearing this morning but have submitted opening statements for the record.

[The statements follow:]

Opening Statement by Senator Goldwater

Today we will hear from NHTSA about a campaign to encourage seat belt usage by the motoring public. Traffic safety is important to all of us and the protection of vehicle occupants should be our constant and individual responsibility. Sensible people who are concerned about their own welfare will use and wear seat belts.

There are some people, however, who through ignorance of facts do not use seat belts, or youngsters who may not yet be educated as to the benefits of seat belts. Such people can benefit from the educational program.

As a pilot, you can be sure that I am well aware of the effectiveness of safety belts.

The use of certain Government funds for safety education is a worthwhile endeavor but I would like to see a broader approach than just public information about the safety value of seat belts. If public funds are to be spent, I would like to see a full-spectrum educational effort that would explain the wide range of available occupant protection systems so that motorists can make up their own minds as to how they want to protect themselves in accident situations.

Mr. Chairman, I refer in particular to air bags and other passive restraints. The technology for them exists and is available. There are companies that make and market them. There can be in the near future a real choice available to consumers as to how they will assure their own safety.

I suggest that any funds to be used for seat belt usage promotion should include specific programs to discuss passive restraints and encourage demonstration projects using passive restraints, in particular the air bag, so that the public can learn about and make up its own mind as to what course of self-protection to take.

The DOT has underway a small program to equip some state police vehicles with air bags. So far in 15 accident situations, the air bags have worked as designed. An expansion of that program, for example, would show the public that there are many ways to achieve vehicle occupant protection.

Opening Statement by Senator Hollings

I would like to commend Senator Danforth, Chairman of the Commerce Committee, for the diligent exercise of his oversight responsibilities in the area of automotive safety. As Chairman, it is clear that he will devote his time and attention to NHTSA and to highway safety in general.

This hearing today is on reauthorization of the NHTSA for fiscal year 1986. The Committee will be looking at a number of issues in connection with the authorization. These issues include: the DOT's 1984 passive restraint decision; the costs and benefits of the current 2.5 mph bumper standard as opposed to a 5 mph bumper standard; the problem of odometer fraud; actions which could be taken to improve available consumer information on the safety of new cars; NHTSA's record on recalls of automobiles due to defects; and imports of automobiles through the "gray market".

On Tuesday, Senator Exon introduced a bill aimed at combatting odometer fraud, S. 475, and I know some of the witnesses will be talking about that bill. Other bills will be introduced by the Chairman and other Senators dealing with the issues which will be discussed today. All of the witnesses testifying today have considerable expertise in automotive safety and I am sure the Committee will benefit from their views.

The CHAIRMAN. We are pleased that the first witness is Diane Steed, the Administrator of the National Highway Traffic Safety Administration.

STATEMENT OF HON. DIANE K. STEED, ADMINISTRATOR, NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION, ACCOMPANIED BY BARRY FELRICE, ASSOCIATE ADMINISTRATOR FOR RULEMAKING; AND GEORGE REAGLE, ASSOCIATE ADMINISTRATOR FOR TRAFFIC SAFETY PROGRAMS

Ms. STEED. Thank you, Mr. Chairman.

I do have a prepared statement, but I would like to enter it for the record and perhaps just hit a few highlights. First, let me introduce my colleagues.

To my left is Mr. George Reagle, Associate Administrator for Traffic Safety Programs. To my right is Barry Felrice, Associate Administrator for Rulemaking.

I will just hit the highlights of my testimony if I could. First of all, we are pleased to be here, and we are also pleased to say that the fatality rate in 1984 continued to drop to its lowest level of 2.55 deaths per 100 million vehicle miles traveled.

Overall fatalities are up only slightly over 1983, and interestingly enough, it looks like vehicle passenger car fatalities have remained relatively level. The fatality increase comes from other forms of transportation.

I mentioned last time we were here that we have made dramatic progress in the area of alcohol safety and occupant protection. Those items remain on the top of our agency's agenda. We are beginning to see some real advances in the alcohol area and real declines in the incidence of alcohol-related accidents and fatalities.

For example, in 1980, about 50 percent of fatally injured drivers were legally intoxicated. Our data for the first 9 months of 1984 show that that has declined to 45 percent, so people really are heeding the warnings about drinking and driving.

Safety belt use has climbed nationally above 15 percent, an increase that is confirmed by accident investigations. New York, with its belt use law, which went into effect January 1, has experienced a very dramatic increase in belt usage, from 16 percent before the law to between 63 and 76 percent, according to preliminary estimates. We think these trends account for part of the decline in the highway fatality rate.

We move on to alcohol programs. Under the section 408 program, the Alcohol Incentive Grant Program which you helped get through the Congress, 16 States have qualified for a basic grant, and 13 of those have also qualified for a supplemental grant.

The States that have qualified are showing really remarkable progress in the fight against drunk driving. Perhaps one of the most notable examples is North Dakota, which achieved a 44-percent reduction in alcohol-related fatalities during the 12 months ending June 30, 1984.

As far as the 21 drinking age goes, I am pleased to report that the Georgia and Virginia Legislatures have passed age 21 drinking bills. Upon the Governors' signatures, they will become the 25th and 26th States to adopt 21 as the minimum drinking age.

Age 21 bills have been introduced this session in 18 other States.

Let me move on to safety belts in general. I mentioned that New York was the first State to enact a safety belt use law. And I am very pleased to report that New Jersey and Illinois have joined New York, and just yesterday Michigan also passed a safety belt bill in both houses.

By our latest count, there are about 62 bills that would require mandatory safety belt usage, introduced in about 34 States. We think the momentum is shifting in favor of enacting these laws. If clear lifesaving results come from these State laws, we believe that the public support for laws will grow and that fatalities will decline even further.

Let me move on to implementation of the Secretary's 208 decision. We are proceeding with the further rulemaking activity that we talked about at the time she announced the 208 decision. This rulemaking will fully implement the automatic protection features of the standard. Our work on automatic restraints is also continuing.

Just a few weeks ago, the Secretary accepted delivery of the first Ford Tempos equipped with airbags for the GSA fleet. These are the first installment in the 5,000 cars that we have purchased for Federal service.

Other airbag-equipped cars will be introduced into corporate fleets across the country. For example, the Travelers Insurance Co. just purchased 600 of these cars.

We will continue our examination of retrofitted airbags. We have them in police fleets around the country. We have had about a dozen or so deployments, and in each case the results have been quite good. None of the police officers has suffered serious injury.

These activities, together with our initiatives in the areas of public information and education, marketing, and evaluation are more fully described in our agency's plan for the National Occupant Protection Program and in a plan that we are putting together for automatic protection.

Among the activities described in that plan are the development of new informational brochures and automatic restraints and the preparation of a comprehensive bibliography on automatic restraints. That will be available to the public through our hotline.

I think that hits the major portions of my testimony. My colleagues and I will be happy to answer any of your questions.

The CHAIRMAN. Thank you very much.

First, on the question of the passive restraint/mandatory seatbelt phase-in and the ability of the States to cut off the passive restraints in the event that they pass mandatory seatbelt laws covering a sufficient portion of the population. As you know, my own preference has been for airbags.

I think that airbags are proven technology, relatively inexpensive, comparable in cost to things like automatic windows and so on. They would save about 9,000 lives a year, and in addition to

9,000 lives a year, would save many, many life-changing head injuries a year.

Last summer, when the Secretary telephoned me while I was on a fishing trip, she explained the proposal of the Department of Transportation, and my view at the time was, well, this is not my idea of perfection, but it is much further than I thought the administration would go, and that it at least deserved my cooperation.

I have not been sold on the total efficacy of mandatory seatbelt laws, because it is my understanding that even if mandatory, still only about half the people are going to use seatbelts.

But I did believe that it was the intention of the administration that the cutoff proposal, the cutoff part of it for the passive restraints, was going to be reached if a sufficient number of States or if States covering a sufficient portion of the population passed real mandatory seatbelt laws, not bogus seatbelt laws.

Just following in the press the progress of a bill through the Missouri General Assembly, which has already passed the Senate, it struck me just from the information I received about that bill that it is so tepid, so innocuous as to amount to a hoax.

I would like to ask you first, Ms. Steed, with respect to the States that have passed mandatory seatbelt laws, has NHTSA reviewed those laws to determine whether they are sufficient to meet the requirements of the Department?

Ms. **Steed**. We have looked at those laws, Senator, as they have been passed, and we have looked at a number of other laws that States are considering. We have not made a formal judgment on whether or not those comply.

The **Chairman**. Do you intend to do so?

Ms. **Steed**. The Secretary will do so in accordance with the schedule in the 208 rule that she announced, which means that States must have laws that do comply by April 1, 1989.

The **Chairman**. Are you going to wait until the 11th hour to tell the States, or do you intend to tell them as they go along?

Ms. **Steed**. We will make that determination probably some time before April 1989, but I think one of the things that we are talking about is that we are encouraging States to put safety belt laws on the books, because we believe that they will start saving lives immediately.

Many of the child passenger restraint laws, as originally passed, were not what we would have preferred to see, were not strong enough. The States over time have amended those laws so that they do meet certain minimum criteria. They do have a penalty. They do have teeth.

We believe that as the States gain experience with adult safety belt laws, they will come into compliance with the Secretary's——

The **Chairman**. As sort of a bystander of the Missouri legislation, it seems to me to be an obvious hoax passed at least by the State senate in a pell mell effort to satisfy General Motors, in order to try to please them in this frenzied effort to try to get the Saturn plant.

Every State, you know, believes that it wants and that it is going to get this Saturn plant, so that has been the tool that has been used to try to get them to pass bills.

But the Missouri bill provides that not wearing the seatbelt is only a secondary offense, and that a driver cannot be stopped solely because a police officer sees that the driver is not wearing a belt. If the driver is stopped for some other purpose, that is sufficient.

That does not seem to me to be reasonable enforcement of a requirement if you cannot stop a person when you see that the person is not complying with the law. Now, can that conceivably pass the standard of the Department of Transportation?

Ms. STEED. I think that is something we will have to look at, Senator, as we move forward, and as States gain experience with enforcement. The Secretary shares your concern, as I do, for laws that would seem to be bogus, and that is why we set certain minimum criteria that need to be met.

The CHAIRMAN. Do you not think we should tell the States? I mean, the State legislature in Missouri is possibly going to pass this thing. Should we not tell them in advance that clearly if the police officer cannot even stop a person for not wearing a belt, that that cannot possibly meet any reasonable standard?

Ms. STEED. I think we are going to have to look at how States are enforcing it and how many people are following the law. We believe that as a State gains the experience, we will be better able to help a State increase its enforcement.

The CHAIRMAN. As I understood the deal, it was mandatory seatbelt laws, not PR campaigns.

Ms. STEED. That is correct.

The CHAIRMAN. Mandatory, required seatbelt laws. What is mandatory about if the police officer cannot even stop you?

Ms. STEED. I think you will find, as we have found with foreign experience, that even though the foreign law may empower a police officer to stop a vehicle, many foreign countries enforce the law only when they stop vehicles for other violations. Yet in these countries we find very, very high usage rates.

The CHAIRMAN. They announce in their statute that we have a mandatory law, but if you do not wear seatbelts, we are not going to stop you?

Ms. STEED. It may not be written that way in their law, but in fact much safety belt enforcement is done in conjunction with other traffic violations.

The CHAIRMAN. That is the bill that was passed by the Missouri Senate, as I understand it. It says that a person will not be required to wear a seatbelt if there are medical reasons to prevent it. Just reading the newspaper articles and the debate in the State senate in Jefferson City, a statement that a person was afraid that if he wore a seatbelt he would be trapped in the car in the event of accident, that that fear was a medical reason.

Now, what kind of mandatory is that if somebody can say, oh, I am sorry, I was afraid?

Ms. STEED. Our 208 rule permits waivers for medical reasons only, and there are certain medical reasons that do qualify. England's law is written that way. I think you will find that they have very few——

The CHAIRMAN. Did they specify the medical reasons?

Ms. STEED. No, they do not. I think you will find that they have very, very few.

The CHAIRMAN. Do you not think they should specify them? What if a person says, well, I have a cold?

Ms. STEED. I would think that is a doctor's judgment. I suspect that, as in England, many doctors are not going to give a medical excuse for that reason.

The CHAIRMAN. Ms. Steed, no State is going to try to prosecute anybody for a seatbelt law if they have to put on an array of medical evidence as to what is an available medical excuse.

Ms. STEED. But you would carry a certificate from your doctor that says you are excused from wearing a safety belt.

The CHAIRMAN. I will bet this would be a boon for doctors. I will bet there would be seatbelt certificate mills.

Ms. STEED. A whole new industry. What we are really talking about, though, Senator, is hypothetical, is it not?

The CHAIRMAN. It is not hypothetical. It is a hoax. I am concerned that when, as I said, coming off the trout stream of Wyoming, this Department of Transportation rule sounds better to me than I anticipated, that I bought a pig in a poke.

That is what I am concerned about, that the whole thing is a sham, that the whole mandatory seatbelt requirement is a sham and a hoax, and that it can be passed by a State legislature knowing that it is not enforceable.

Minimum penalty for a seatbelt violation, $10. As I understand it, that is not minimum. I believe that may be maximum in Missouri. A $10 fine is a $10 fine. Supposing that that is the fine, does that do it?

Ms. STEED. All States, again, Senator, must meet certain minimum criteria. I can assure you that this effort is not a hoax and that we certainly believe that people are going to wear their belts. With the very first State that we have in this country with a safety belt law, it is working.

One of the reasons that we are not going to the States and saying you do comply or you do not comply yet is that they must have an effective enforcement program, and until we see how those laws are enforced, how can we say whether or not it is effective? Up until that point it is speculation.

The CHAIRMAN. If somebody passes a law that on its face is ridiculous, can you not tell? From all the legislative history, and all the debate, and all the stories written about it, as it proceeds through the General Assembly, the clear intention of it is not to pass anything that is effective at all, but rather to meet the requirements of the Department of Transportation for the sake of supinely prostrating yourself before General Motors in an effort to get the Saturn plant.

There is nothing effective in that, is there? It is a hoax.

Ms. STEED. But the other part of our job, and one of the reasons that we have announced this public information campaign across the country, is to make sure that those laws are not just pieces of paper, that the public knows the value of belts.

We are seeing safety belt usage increase across the country because people are becoming much more aware of the protection that any kind of occupant restraint offers.

The **Chairman.** In other words, you are making exactly the same argument that Ray Peck would make. This is a Ray Peck argument about the effectiveness of public education campaigns.

Ms. **Steed.** But we have seen in so many instances, Senator, where that kind of education has in fact worked. I am not talking about a media campaign, and we could cite you example after example.

The **Chairman.** I have heard it before. I have heard it before. Listen, I do not mean to badger you. You are a perfectly fine person. And you know, I do not really like to berate people. It is just that I think in this issue really there are 9,000 lives involved in it, and we have created a situation which I think is just totally a hoax.

That is my view of it. If this kind of law meets the mandatory requirement, there is nothing there. There is nothing there. There is just a huge loophole that renders ineffective the whole effort of the Secretary of Transportation.

Well, let me ask you a few other questions on a few other subjects. What is NHTSA doing about the Ford faulty transmission problem?

Ms. **Steed.** The Ford transmission park-to-reverse question?

The **Chairman.** Yes.

Ms. **Steed.** The Ford transmission case was settled on December 30, 1980. It was settled out of court. The then-Secretary of Transportation overruled the former Administrator and did not make a final defeat determination.

The settlement, as I understand it, said that because they could not find a formal defect, because they could not separate what a formal mechanical defect was from the human factors involved in the situation, that they would allow the Ford Motor Co. to undertake a campaign to make sure that people follow certain simple safety rules: turn your car off; make sure that it is in park; and set the emergency brake.

They expected as was cited in the Secretary's letter, that the agreement would result in a significant drop in fatalities.

The **Chairman.** It has not, has it?

Ms. **Steed.** It has shown a very significant drop in fatalities.

The **Chairman.** Only 80 people have been killed.

Ms. **Steed.** If you look at the drop in actual fatalities from the time it was settled, they are continuing to drop.

The **Chairman.** You are satisfied therefore with the situation?

Ms. **Steed.** It is not whether I am satisfied or not. I am not satisfied if any one person is killed, Senator. But it is a judgment call. It has been litigated in two separate courts, and both courts said that we would have a very tough, if not impossible, job of proving a defect.

The **Chairman.** Ten people in Missouri have died. What other evidence is necessary?

Ms. **Steed.** The question is whether we go back and work on finding a formal defect in that case, and as I said, it has been litigated twice. Both courts said because human factors are such a prevalent part of the problem, it would be very hard to prove a defect, and issue a recall order.

So, what we are doing is evaluating every single case. If we find any evidence that would lead us to believe that there are facts in the case that would allow us to prove that defect and therefore go for a recall, we would perhaps change our position, but at this point, with all of the accidents that we have investigated, we find no new facts.

The CHAIRMAN. Is that your own opinion? Do you have an opinion whether or not Fords present a safety problem because of their transmissions?

Ms. STEED. I am sorry?

The CHAIRMAN. Have you reached an opinion yourself as to whether or not Fords present a significant safety problem because of their transmissions?

Ms. STEED. In reading back through all of the cases and in talking with my experts and going through what we are finding on the investigations, we cannot separate what would be a mechanical defect from the human factor side of it. And it is a problem that simply does not exist if people will turn off their cars.

The CHAIRMAN. In other words, your view is that there is no particular problem with the Ford transmission; that it is the same as Chevys or any other car?

Ms. STEED. There is no question when you look at the numbers, we do see park-to-reverse accidents with all types of cars. We have looked at peer groups of those makes and how often such accidents happen—and Ford is overrepresented.

But again, I have to rely on what was found in court of law twice.

The CHAIRMAN. No particular problem with Ford? How about the bumpers, any news on the bumpers? Do we still have the 2.5 mile cosmetic bumper?

Ms. STEED. We have 2½ mile bumpers at this point, yes, sir. As I mentioned last time we came before you, we are, coming up with evidence to see how well 2.5 mile per hour bumpers are performing as we are required to do by statute. We should get the 1984 insurance data this month. We will analyze that and be back to you with any new findings.

The CHAIRMAN. Did not NHTSA make a commitment at the time that the standard was rolled back that it was going to publish bumper ratings?

Ms. STEED. We are working on that. As a matter of fact, we had tested originally nine cars with the test methodology, and we found good correlation with some data. We have tested 15 more. That report is due this month, and it looks promising. If those 15 cars test out as well as the 9, we ought to be able to come up with a bumper rating program.

The CHAIRMAN. Let me ask you just one other question. On the gray market question, what is the problem, if there is one, and what do you think should be done about it?

Ms. STEED. We are concerned about a potential gray market problem, and we have had a number of instances brought to our attention by dealers and companies that there may be a problem bringing in cars, imported cars, that do not comply with our safety standards.

Because we have thought that it may be a problem, I have asked our people to do a couple of things. Over the last 3 months, we have been spot checking actual cars that have come in from about four different ports of entry. We are also purchasing several cars from a commercial importer that have been modified or supposedly modified to meet our standards. We will test those cars to see if in fact they do meet the standards. Once we have done both of those things, I will have a much better idea whether or not the alleged problem is in fact a problem.

I am particularly concerned about the problem of trying to recall gray market cars. There is no way right now that cars brought in under the so-called gray market could be recalled. During the next 2 months we will develop a much better idea of the magnitude of that problem, and will consider several alternatives that we could take to deal with that problem.

The CHAIRMAN. Even if there is no recall, there could be some prospective steps, could there not?

Ms. STEED. I am sorry?

The CHAIRMAN. Prospectively we could do something, could we not?

Ms. STEED. Yes. The action we could take would depend upon how big the problem is and exactly what the problem is, and there are a number of things we could do. In addition, we are also addressing that question through our new regulation under the Theft Act.

The CHAIRMAN. OK. Well, thank you very much, Ms. Steed. I hope you get over your cold.

Ms. STEED. Thank you.

The CHAIRMAN. I think you are doing a better job than Ray Peck did.

Ms. STEED. Thank you, sir.

The CHAIRMAN. There is still room for improvement, though. Thank you very much for being with us.

[The statement follows:]

STATEMENT OF HON. DIANE K. STEED, ADMINISTRATOR, NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

Mr. Chairman and members of the Committee, I am pleased to appear today to testify on the activities of the National Highway Traffic Safety Administration. Much has happened in highway safety since I appeared before you in September 1984, and I am glad to have this opportunity to bring you up to date.

First, I want to report that the fatality rate in 1984 declined to an all-time low of 2.55 deaths per hundred million vehicle miles travelled. In 1984, the combined effects of a variety of interrelated factors—alcohol programs, improved vehicles, higher levels of belt use, better roads—was almost enough to overcome the effects of a 4.5 percent surge in vehicle miles travelled during the year. Our final data is not yet in, but we estimate that 43,800 persons died in highway crashes during 1984, an increase over the 42,600 who died in 1983, but well below the number who would have died if safety efforts had not moved ahead. This number shows progress, but it also shows how far we have to go.

In September I reported dramatic progress in the areas of alcohol safety and occupant protection. Today those items remain at the top of my agency's agenda. In the area of alcohol, we are beginning to see evidence of a real decline in the incidence of alcohol-related fatalities. For 1980, our data indicated that about 50 percent of fatally injured drivers were legally intoxicated. Our data for the first 9 months of 1984 suggest that the percentage of intoxicated drivers in fatal accidents has declines to 45 percent. In the area of occupant restraints, the upward movement in belt use now seems to be well established. Our roadside observations indicate that the use rate among drivers has climbed above 15 percent, an increase confirmed by our accident investigations. New York, with its belt use law which went into effect January 1, has experienced a dramatic increase in belt usage from 16 percent to an estimated 63-76 percent, based on preliminary data. We believe that these trends in alcohol involvement and belt use account for a part of the decline in the highway fatality. I believe that new developments in both areas will produce even more pronounced improvements during the coming year.

ALCOHOL PROGRAMS

I will turn first to the alcohol safety program. During the last two sessions of Congress, this Committee reported two major bills which were enacted into law to deter drunk driving. The first, enacted in 1982, established the Section 408 alcohol safety incentive grant program. Under this program, 16 States have now qualified for a basic grant, and 13 of those States have further qualified for a supplemental grant. A number of other States have enacted legislation satisfying several of the grant criteria and are working to satisfy the remaining criteria. Several of the qualifying States have already shown remarkable progress. One of the most notable examples is North Dakota, which achieved a 44 percent reduction in alcohol-related fatalities during the 12 months ending June 30, 1984, compared to the preceding 12 months. We are working with the qualifying States to implement their programs and expect to see significant reductions in alcohol involvement as a result of these programs.

The second bill, enacted last summer, directs the Secretary of Transportation to withhold 5 percent of the fiscal year 1987 Federal-aid highway funds and 10 percent of fiscal year 1988 funds from any State that permits the purchase or public possession of alcohol by persons under the age of 21. After the law was enacted, Massachusetts raised its minimum drinking age to 21. I am pleased to report that the Georgia and Virginia legislatures have passed 21 drinking age bills. Upon the Governors' signatures, these will become the 25th and 26th States to adopt 21 as the minimum drinking age. Age-21 bills have been introduced in 18 other States. Although the legislation was defeated in Wyoming, we are encouraged to see that age-21 bills have passed the Senates of Mississippi and Montana. We believe there is a good chance of passage in other States as well. We have developed a notice of proposed rulemaking, which we hope to publish in the near future, to assist the States in adopting drinking age legislation.

I believe that this guidance will facilitate the enactment of age-21 drinking laws in additional States. It will thereby help reduce the tragic loss of lives resulting from the involvement of young drivers in alcohol-related accidents, while also helping to assure the continued availability of Federal-aid highway funds to the States.

SAFETY BELTS

After years of perseverance and hard work, safety advocates in the States are succeeding in passing laws to require the use of safety belts. At the time of the September hearing, New York had become the first State to enact a mandatory use law. I am very pleased to report that New Jersey and Illinois have now joined New York.

During the 1985 legislative sessions, bills to require safety belt use have been introduced in 29 States and are expected to be considered in several others. A belt use bill has already passed the Michigan Senate and is given a good chance of final passage. Safety belt legislation also passed one house in both the Maryland and Virginia legislatures, which should help lay the groundwork for renwed efforts in those States next year. The prospects in several other States are also favorable for serious consideration of belt use laws.

This year, we believe the momentum is shifting in favor of enacting State belt use laws. As the clear life-saving results from the States become known, we expect that public support for belt use laws will increase even further. The plain fact is that safety belts save lives. In New York alone, millions of motorists will be buckling up, many for the first time. Thousands of persons will now be wearing belts when crashes occur, and many will be spared death or serious injury because of the belts. The statistics will speak for themselves, and the doubters will become believers.

As I noted earlier, preliminary data from New York after the belt use law went into full effect on January 1, 1985, suggests that from 63 to 76 percent of motorists are buckling their belts, up from 16 percent in early October. We have worked intensively with New York in the development of public information and education program to help gain public acceptance of the new law. This tremendous increase over prior usage levels supports our belief that safety belt use laws will produce the same life-saving benefit in America that they have provided in other countries.

We are doing our utmost to ensure that information about the benefits of safety belts is available to a wide spectrum of individuals and organizations in each State. We have every hope that 1985 and 1986 will be breakthrough years for safety belt legislation.

To enable our efforts to move ahead, we are seeking full funding for the $20 million occupant protection program in fiscal years 1985 and 1986. We have developed a National Safety Belt Education Program for which these funds would be used. A major objective of this program is to lay a foundation which will result in belt use and usage laws becoming more acceptable to policy makers and the public. Despite the program's current funding limitations we have made substantial progress. We have made presentations at governors' conferences, State and national conferences of legislators, before newspaper editorial boards throughout the country, on radio and television news programs and talk shows, and have testified, when requested, before State legsilatures. We have sponsored two conferences for State legislators on occupant protection. We have responded to numerous requests for information from legislators and the public. All fifty States have been contacted and offered technical and other assistance to the extent that our limited funding permits.

IMPLEMENTATION OF THE 208 DECISION

Your letter of invitation asked for a report on the implementation of the Secretary's decision on Motor Vehicle Safety Standard No. 208, "Occupant Crash Protection." Our efforts to encourage safety belt usage are a part of this implementation process, because we believe it is vital to the safety of the motoring public to move ahead with these measures that will bring about the most immediate reductions of traffic on deaths and injuries. At the same time, we are proceeding with the further rulemaking activity necessary to implement fully the automatic protection features of the standard, and we plan to issue notices soon on the test procedures of the standard, on the use of the Hybrid III test dummy, on the comfort and convenience of restraints, and on the petitions for reconsideration of the Secretary's decision.

Our work on automatic restraints is also continuing. On February 7, Secretary Dole accepted delivery of the first Ford Tempos equipped with air bags for the GSA fleet. These represent the first installment of a 5,000-car air bag equipped fleet for Federal service. Others will be introduced into corporate fleets. The Travelers Insurance Company, in fact, has just announced the purchase of 600 of these cars. We are continuing our examination of retrofitted air bags in police fleets around the country. The results so far have been quite good. Our examination of two different types of retrofitted air bags may demonstrate the practicability of these devices in the marketplace.

These activities, together with other agency initiatives in the areas of public information and education, marketing, and evaluation are more fully described in the Agency's Program Plan for Automatic Protection. Among the activities described in the plan are the development of new informational brochures on automatic restraints and the preparation of a comprehensive bibliography to be available through our Hotline.

BUMPERS

Another subject mentioned in your letter concerns the bumper rulemaking. In a long-awaited decision, the U.S. Court of Appeals for the District of Columbia Circuit recently upheld the agency's decision to lower the bumper impact speeds from 5 to 2.5 miles per hour. Notwithstanding the Court's decision, we are continuing our efforts to evaluate the relative performance of 5 mph bumpers and lower-speed bumpers in real world conditions.

Under the Motor Vehicle Information and Cost Savings Act, the essential inquiry is not whether the 5 mph bumper withstands low speed impacts better than the 2.5 mph bumper—we know it does—but whether the 2.5 mph bumper produces cost savings to the average consumer in the real world. We continue to believe that the 5 mph bumper is not cost-beneficial for the vast majority of consumers who will never actually experience impacts between 2.5 and 5 mph. These consumers will enjoy the maximum feasible reduction of costs with the standard set at 2.5 mph. However, some of those consumers may prefer to buy a car equipped with 5 mph bumpers, and we are pleased that the market is responding to that demand by offering a wide choice of cars with 5 mph bumpers. It was our careful consideration of this statutorily mandated balancing test that led us to set the bumper standard at 2.5 mph in 1982.

In parallel with our work on the bumper standard, we are continuing work to provide consumers with information on bumpers. We have just completed a second series of tests to measure bumper performance, involving 15 vehicles in low speed impacts, and we are collecting information from insurers on the real world accident experience of these vehicles in hopes of validating our tests.

SIDE IMPACT PROTECTION

Another topic mentioned in your letter is the protection of vehicle occupants from side impacts. We have developed and tested a dummy to measure chest accelerations in side impacts, a deformable moving barrier for dynamic side impacts, and an index for measuring thoracic trauma. The problems of head injury and ejection are further from resolution, with much research remaining to be done.

SPLASH AND SPRAY

In response to your final area in inquiry, a notice of proposed rulemaking regarding the splash and spray characteristics of large trucks, as required by the Surface Transportation Assistance Act of 1982 is pending at the Office of Management and Budget. The notice will propose specifications to reduce the volume of water thrown up by these trucks on wet roads. I know that the Committee has been writing for this proposal for some time. I hope that we can move forward on this complex rulemaking shortly.

Mr. Chairman, this concludes my prepared remarks. If you have questions, I would be glad to answer them at this time.

[The following information was subsequently received for the record:]

QUESTIONS OF THE CHAIRMAN AND THE ANSWERS THERETO

Question 1. You noted in your testimony that the highway fatality increase in 1984 came from forms of transportation other than passenger automobiles. Which forms of transportation experienced increases in highway fatalities during 1984?

Answer. Highway fatalities of all types increased during 1984, but at different rates. Passenger car occupant fatalities increased by the smallest percentage of any major type. Although passenger car occupants still account for over half of all fatalities, they contributed less than 30 percent of the increase. The estimated fatality increase from each major type is given in the following table.

1983—84 FATALITY INCREASE

	Count	Percent
Pedestrians and cyclists	200	3
Occupants of:		
Passenger cars	430	2
Light trucks	280	5
Heavy trucks	110	14
Motocycles	350	9
Other vehicles	40	9
Unknown vehicle types	80	6
Total	1,490	3

Question 2. Please Provide the Committee with a Chronology and Brief Summary of NHTSA's Research Efforts on Side Impact Protection for Passenger Vehicles. Based on information available to NHTSA at this time, do you believe the current side impact standards should be improved? Are any improvements in the standard technologically feasible at this time?

Answer. In 1977, the National Highway Traffic Safety Administration (NHTSA) established the upgrade of side impact protection as a top priority program in its rulemaking plan. The research program undertaken by NHTSA can be divided into two distinct phases:

1. The near-term Thoracic Side Impact Protection Program (TSIP).
2. The Comprehensive Side Impact Protection Program.

The major emphasis of the near-term program has been on mitigation of thoracic injuries in side impacts. The activities in this program included accident data analysis, the development of test devices such as the Moving Deformable Barrier (MDB) to simulate a striking vehicle and the Side Impact Dummy as a human surrogate, development of test procedures, design and development of injury mitigation concepts and their evaluation.

ACCIDENT DATA ANALYSIS

As a result of the analyses of the available accident data files, it has been established that approximately 40% of the serious-to-fatal injuries in side impacts occur due to contacts of the "hard" thorax to the side interior components such as door panels, arm rests and other interior hardware. Other major elements of the side protection issue include head, face and neck injuries caused by contacts with roof pillars, roof side rails and window frames, as well as occupant ejection through side doors. NHTSA's near-term research program addresses thoracic injuries. The longer-term comprehensive side protection program is intended to address mitigation of head/neck injuries and ejection.

DEVELOPMENT OF THE MOVING DEFORMABLE BARRIER (MDB)

This research was initiated in 1978 and completed in 1983. A Moving Deformable Barrier was developed under this program to simulate a striking vehicle. It has a flat impact surface with a 4" protrusion simulating the bumper. It has a deformable aluminum honeycomb face simulating a passenger vehicle in frontal stiffness, and profile.

SIDE IMPACT DUMMY (SID)

The Agency's research efforts led to the development of a human surrogate. This surrogate appropriately mimics the dynamic behavior of the thorax of the human body in a typical car-to-car side impact.

Based on cadaver testing, NHTSA has developed a thoracic injury criteria. This criteria, called the Thoracic Trauma Index (TTI), is basically a statistical estimate of injury probability in terms of age, body weight and peak accelerations of the left upper rib and the spine.

TEST PROCEDURE DEVELOPMENT

As a result of the accident data analysis, full vehicle systems' test conditions have been defined. A draft test procedure has been developed and placed in the public docket.

In addition to the full systems tests, NHTSA has conducted a number of tests using a component test device. These tests were developed for simulating the interaction of the human thorax with the side door interior. The performance of the side door interior components in their interaction with the SID thorax has been evaluated by these tests.

EVALUATION OF FULL SYSTEMS MITIGATION CONCEPTS

Two major design, development and test programs referred to as the Modified Integrated Vehicle (MIV) projects have been completed. One of these projects under contract to VW used a 1981 VW Rabbit as the baseline vehicle. In the other, MCR Technology Inc, used a 1980 4-door Citation. In these projects structural modifications and interior door-padding design changes were incorporated into the baseline vehicles. These vehicle improvements were evaluated in full systems tests.

Based on the very encouraging results from the above programs, NHTSA conducted an extensive evaluation of the effect of padding and structural modifications on potential occupant injuries in moderate and severe side impacts. Tests were conducted at two different velocities and impact angles which enabled comparisons of baseline and structurally modified and padded VW Rabbits. From these tests it was observed that the probability of thoracic injury was significantly reduced when padding or padding and structure were added to the baseline vehicle.

COMPREHENSIVE SIDE IMPACT PROTECTION PROGRAM

Further research to tackle problem areas which have not been addressed are included in this program. The comprehensive side impact protection program is examining the effect of various striking vehicle attributes such as stiffness, hood profile and geometry, bumper—sill engagements etc. The ongoing research will be investigating the possibility of the use of padding in roof pillars and roof rails as well as the use of glass plastics in windows to reduce possibility of head injuries in side impacts. Improvement to hinges and latches will also be examined as a possible approach to reducing likelihood of ejections.

While it might be technologically feasible to amend the current standards for side-impact protection (FMVSS No. 208 S. 6) and side-door strength (FMVSS No. 214), we believe that further research is needed to determine what revisions would be most desirable, as well as to evaluate the costs and benefits associated with such changes.

As noted above, our research is well under way, and this subject is one of the Agency's top research priorities.

Question 3. As you note in your testimony, major federal legislation addressing drunk driving was enacted in 1982 and 1984. In your view, is there any additional action that Congress should take to further combat this problem?

Answer. The enactment of the Section 408 Alcohol Incentive Grant Program in 1982 and the recommendations of the President's Commission on Drunk Driving have provided substantial impetus for State initiatives to combat drunk driving. Statistics indicate that alcohol-related traffic fatalities have in fact significantly decreased. The agency is conducting an analysis of the Section 408 program, which should be completed by this summer, to determine whether changes to that program or other Federal initiatives may be appropriate. We also intend to address funding for our State traffic safety grant programs as part of the Department's surface transportation reauthorization legislation, which will be submitted to Congress in several months.

The age-21 legislation enacted last year has already resulted in substantial legislative activity at the State level to consider establishing minimum drinking ages of 21, and we believe the Federal law provides sufficient incentives to achieve the goal of a uniform drinking age. Accordingly, we do not believe further Federal legislation will be necessary on that subject. We are working closely with the States to encourage them to enact age-21 laws, and we are carefully monitoring their responses to this important initiative.

Question 4. You stated that NHTSA is planning to develop new information brochures on automatic restraints. Will these brochures address all types of passive restraints? When will these brochures become available to the public?

Answer. The brochures now being developed will address the types of passive restraints currently available—automatic safety belts and air bags. A brochure dealing with the need for occupant protection and focusing primarily on automatic belts and air bags is in the final stages of internal review and should be available to the public shortly. Another brochure, addressing myths and facts about air bags, is still being developed. We are also preparing a bibliography of materials on passive restraints produced by other sources.

Question 5. What information is currently available to the public from DOT on seat belts, mandatory seat belt laws, and airbags? Please supply the Committee with these items.

Answer. The Department is developing new materials about automatic occupant protection that include a discussion of airbags and will be available to the public shortly. Some existing materials are scheduled to be modified to include material on passive restraints. These are noted on the list below. Requests for information about mandatory safety belt use laws are met with copies of the Final Rule on Occupant Crash Protection as printed in the Federal Register on July 17, 1984, and with copies of a model mandatory safety belt law. A copy of each is enclosed.

The following is a list of materials about safety belts currently available to the public from DOT; a copy of each is enclosed.[1]

General audience materials

How Many of These Fairy Tales Have You Told?[2]
Safety Belts—A History Lesson for Adults.[2]
The Automobile Safety Belt Fact Book.[2]
The Human Collision.
The Safety Belt: How It Works (Fact Sheet).[2]
Effectiveness and Efficiency of Safety Belt and Child Restraint Usage Programs.
Occupant Protection Public Information Materials Catalog No. 6.
State and Community Program Area Report: Occupant Protection, 1983-1984.
How to Plan a Comprehensive Community Occupant Protection Program.[2]

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[1] These materials have been retained in the Committee files.
[2] Materials that are scheduled to be modified to include passive restraints.

A Guide to Audiovisual and Print Materials on Safety Belts and Child Car Safety Seats.[2]

The Safety Belt Proponent's Guide.

Age Page.

Buckle Up, Your Life Is In Your Hands (Dashboard Sticker).

Educational Setting Materials

We Love You, Buckle Up! (Pre-School Curriculum).

A Safer Way for Every Day (Schoolchildren Grades K-3).[2]

3 Seconds to Safety (Schoolchildren Grades 3-6).

Safety Belt Activity Book—A Guide for Teachers of Grades K-6.

Restrain Yourself (Driver Education, Grades 9-12) [2]

Beating the Odds (Health Education, Grades 9-12) [2]

Automobile Occupant Protection: An Issue for Health Educators.

The Safety Belt Message: The Student's Lesson.

Seat Belt Science: Activities for General Science.

Physics and Automobile Safety Belts.

Teaching Contemporary Issues: The Politics of Safety.

Health Education Quarterly ("Occupant Protection and Health Promotion").

Workplace Setting Materials

Fight the Hidden Tax. . .[2]

The Profit in Safety Belts: An Introduction to an Employer's Program.[2]

The Profit in Safety Belts: A Handbook for Employers.[2]

A Directory of Workplace Occupant Protection Programs Among Company Members of the National Safety Council.

Question 6. The argument has been made that mandatory seat belt laws will not reduce death and injury as much as they should because the people who most frequently are involved in crashes will be the least likely to be wearing seat belts. What is your opinion of this argument?

Answer. While our figures indicate that the drivers most likely to be involved in accidents (including those who have been drinking) are less likely to wear their belts voluntarily, we believe that safety belt usage laws will provide substantial added protection for these persons, as well as for safer drivers.

The data indicate that modest increases in belt usage do not necessarily produce proportional declines in traffic deaths and injuries. Our projections of the lives that could be saved by belt use laws took this phenomenon into account. But experience shows that belt use laws produce dramatic increases in belt usage, and significant declines in casualties For example, Great Britian's 1983 mandatory belt usage law has resulted in belt usage rates of more than 90 percent, and dramatic reductions in death and injury for all categories of drivers. Preliminary figures from New York State likewise indicate both substantial increases in belt usage and declines in traffic deaths since the mandatory use law became fully effective on January 1. We believe the results will be largely the same in all States—as safety belt use laws are enacted, belt usage will increase significantly among all types of drivers, and death and injury rates will decline substantially, even for the high-risk group.

Question 7. During your testimony you stated that NHTSA "probably some time before April of 1989" will determine which state mandatory seat belt use laws meet the Department's criteria. Can you be any more specific as to when we might see any such determinations by NHTSA? How much enforcement experience with each state law do you believe is needed before a determination can be made?

Answer. We are providing guidance to the States by disseminating a model safety belt usage law which meets the criteria set out in our final rule. We have been assisting the States in comparing the provisions of State safety belt use laws to the minimum criteria of the occupant protection rule. We will make our determinations of whether individual state belt usage laws meet the minimum criteria of the occupant protection rule well in advance of April 1989. The subject of mandatory use laws is being actively considered in many State legislatures, and the public debate over what features those laws should contain, including the content of the State's enforcement program, is healthy and contributes to public awareness of the importance of safety belt use.

Question 8. How has NHTSA spent the $2.5 million authorized in 1984 for the seat belt/passive restraint education program and how do you plan to spend the $7.5 million for which you are currently seeking reprogramming authority? What materials have been prepared to date? What consultants have been hired to work on this effort? What specific efforts are being undertaken by NHTSA at the State level?

What proportion of the $10 million has been or will be expected for education efforts related to airbags? In what specific ways has NHTSA promoted airbags?

Answer. The 208 implementation pian is a clear extension of the existing NHTSA safety belt usage program that was developed over the past three years to stimulate voluntary usage. The conceptual basis for the past program, and for the 208 implementation plan, is principally to stimulate programs and education at the State and community levels. The lessons that have been learned over the past three years in stimulating State and community programs have been carried over into the 208 implementation plan. Efforts in child safety seat programs, model community programs, employers programs, and efforts at the community level by national organizations have formed the foundation for the 208 implementation plan. The result is that there is no clear division between the existing program and the "new" FMVSS 208 implementation program.

To date, we have spent funds in providing training programs and seminars for State and local organizations; assisting States in program implementation; designing educational materials on all types of occupant protection for general audiences, as well as special target groups such as the elderly, youth, and minorities. We have also funded State evaluation efforts and other research and development tasks. The remainder of the $10 million will be allocated among these same categories, to allow us to provide full technical and program support to at least 10 states.

Thus far, existing educational materials have been used in the effort. In addition, two brochures on passive protection are currently under development to supplement existing supplies.

No consultants have been retained for the program.

Our assistance to the States is chiefly in the form of technical and financial assistance. Included in our technical assistance package is:

1. safety belt and child safety seat community programs management course;
2. child safety seat law implementation workshops;
3. employer programs workshops, and;
4. media access workshops.

Financial assistance will come principally in the form of State program grants to be administered predominantly through State Highway Safety Offices, and grants to develop community-based programs through mini-grants. Additional funding through national organizations (like the PTA and American Red Cross) will result in statewide programs in a number of States including additional resources to stimulate community programs.

The following lists the kinds of activities we plan for passive protection at the $20 million funding level. At the $10 million level, the demonstration program (fleet purchases for State and community governments) will not be possible.

Key Passive Restraint Initiatives: Demonstration Programs—Fleet Purchases—This program will provide small amounts of "seed money" to encourage State and local governments to retrofit or purchase air bag equipped vehicles to provide a demonstration fleet (5,000 cars) for early experience with air bags and promotion of public acceptance. These fleets will demonstrate retrofit air bags, such as those now being installed in police cars, new retrofit technology such as the Breed System, as well as original equipment—$2,500,000.

Public Education and Demonstration Project—Demonstration cars will be replaced with up-to-date technology in NHTSA's regional offices to demonstrate passive technology on request at events such as State fairs and conventions. Each region will have available an automatic belt car and an air bag demonstration car which can stimulate air bag inflation in a crash. Funds will be used to purchase and/or equip the vehicles and provide for their demonstration—$400,000.

Marketing Passive Restraints: Enhancing Public Acceptability and Understanding—In making her final decision to require passive restraints unless sufficient numbers of effective mandatory safety belt use laws are enacted, Secretary Dole found that an across-the-board mandate of passive restraints too quickly could engender adverse public reaction. Partly for this reason, Secretary Dole found that gradual exposure of the public to passive restraints would increase public acceptability of them and, therefore, decided to phase in the requirements for passive restraints, beginning with 10 percent of the fleet manufactured for sale in the U.S. after September 1, 1986. The phase-in, however, could create special marketing challenges for auto dealers and lessors. To mitigate this, the Department of Transportation has a responsibility to help enhance public understanding of the lifesaving potential of passive restraints, even as it is educating the public to the faster lifesaving potential of safety belt use laws. The Department will prepare targeted educational material explaining the lifesaving value of passive restraints—how they work, why they work, etc.,—with particular emphasis on materials appropriate for distribution at the point of automobile sales or lease. For example, NHTSA will develop print and video materials to be used by the American Automobile Leasing Association in their effort to encourage their members to purchase passive restraint equipped cars—$600,000.

Materials Development and Dissemination—Funds will be used to develop and distribute basic materials (1) describing automatic protection systems—what they are and how they work, and (2) clarifying the facts and myths now surrounding passive systems. These materials will be used to respond to questions from the general public and would be appropriate for use by civic groups, State legislators, general press background, etc.—$471,000.

The above and other activities are included in NHTSA's *Program Plan for Automatic Occupant Protection* which will be submitted to the Committee shortly.

Question 9: I understand that preliminary data show that New York State's seat belt use law is working well and that belt usage is increasing. I also understand, however, that New York's law provides that a police officer may stop a motorist solely for a seat belt violation. Other seat belt laws enacted to date provide that a motorist can be stopped for a seat belt violation only if it is in conjunction with another violation. Do you believe that laws making failure to wear a seat belt a secondary violation can be effective in promoting belt use? If a law makes failure to wear a seat belt only a secondary violation, do you believe such a provision would be consistent with the Department's requirement that a violation occurs if the seat belt is not fastened for front seat occupants "at all times when the vehicle is in forward motion?"

Answer. Because we have had virtually no experience with mandatory safety belt use laws in this country, it is difficult to draw film conclusions as to the effectiveness of different enforcement schemes. Our preliminary assessment is that belt laws allowing citations only in conjunction with other violations can be effective, but that belt laws allowing citations for that violation alone may be even more likely to be effective. Our understanding of the actual enforcement practice in New York thus far is that most of the citations for failure to wear a belt have been in connection with other traffic offenses. Preliminary reports indicate that the usage level in the State has been remarkably high. The same enforcement practice is followed in Great Britain, where the use level exceeds 90 percent.

As a practical matter, we would expect most belt usage citations to be issued in conjunction with other violations, even if state laws classify the belt violations as "primary." One of the minimum criteria in the final rule is a program to encourage compliance with the belt usage requirement, and we will carefully evaluate each State law to determine whether that criterion has been met.

Question 10: You stated in your testimony that you believe NHTSA should be able to come up with a bumper rating program. When do you envision that bumper ratings would be widely available to the public?

Answer. As directed by the House Committee on Appropriations, the agency submitted a report on the Consumer Information Program on Bumpers, dated January 1984. The report outlined four tasks involved in developing an objective and meaningful methodology for assessing bumper performance in low-speed front and rear collisions. These four tasks were:

1. The development and demonstration of an experimental bumper test methodology (i.e., test speed, test angles, etc.). Eight vehicles to be tested with this methodology.
2. The expansion of the testing to include 15 vehicles.
3. The verification of test results with on-road experience, based on insurance data.
4. The development of methods for the dissemination of bumper performance information to consumers.

Task 1 was completed in August 1984, with a test methodology including Part 581 (bumper standard) pendulum impacts at the front and rear bumper corners, each at a different speed—5 and 7 mph rear, and 6 and 8 mph front. In line with Task 3, a preliminary analysis indicated that a general relationship exists between the test results and overall insurance claims for the eight vehicles tested.

Testing under Task 2 was completed in February 1985. A full comparison of the laboratory test results of the first eight vehicles with insurance claims data on low-speed, bumper-involved front and rear accidents is currently under way. A second comparison of laboratory test results and insurance claims data will be made using the results of the 15 cars tested under Task 2. Additionally, under Task 4, a consumer study is planned to determine the best methods for formatting and disseminating the bumper performance information. We expect to complete our internal analyses this summer, at which time we will make decisions regarding the future direction of the Consumer Information Program on Bumpers.

Question 11. Do you believe Congress needs to take any action with respect to "gray market" imports

Answer. We are reviewing the results of recent spot checks we conducted of vehicles claimed to have been modified to meet the applicable Federal Motor Vehicles Safety Standards in order to determine whether the modifications in those vehicles are adequate to bring the vehicles into conformity. This review will help us assess the extent of any safety problem associated with the "gray market." I expect to be able to share the results of this assessment with you by June 1. After we have completed this assessment, we will be a better position to provide meaningful comments on the proposals pending in Congress regarding the automobile "gray market" and on whether current law provides adequate authority to address problems that may exist.

Question 12. In testimony before the Surface Transportation Subcommittee on February 9, 1984, Deputy Secretary of Transportation James Burnley said that DOT had a draft Notice of Proposed Rulemaking (NPRM) for the splash and spray suppression standard mandated by the Surface Transportation Assistance Act of 1982. I understand that the NPRM is now going through the review process at the Office of Management and Budget. When can we expect this NPRM to be issued?

Answer. The Department conducted several tests and prepared a preliminary analysis of splash and spray suppression devices, which formed the basis for our proposed rules under the STAA of 1982. We have submitted a notice of proposed rulemaking to the Office of Management and Budget, as required by Executive Order 12291. My staff has met with OMB staff several times, and we believe the review is nearly complete. We hope to publish the notice for public comment in the very near future.

Question 13. Do you believe that truck spray is problem? In your view, would reducing the spray level enhance highway safety?

Answer. While NHISA's research does not document the extent to which truck spray may present safety problems, some private studies suggest that a substantial number of motorists are concerned by the visibility loss attributed to truck splash and spray.

Three types of possibly hazardous events may be associated with truck splash and spray:

(1) A motorist passing a truck may have his vision obscured. On a two lane road, he may not be able to see oncoming traffic; on a multi-lane road he may not be able to see ahead clearly and may drift out of his lane.

(3) A truck driver trying to change lanes may have his rearview mirror obscured by spray and move into a lane occupied by another vehicle.

One research study concluded that a relatively large improvement in visibility (perhaps 40 percent) may be needed to measurably reduce driving difficulty and accident risk. The degree to which a smaller percentage improvement in visibility improves safety remains to be seen. Furthermore, it appears that the benefits of splash and spray countermeasures could be significantly reduced in relatively low volocity crosswinds on the downward side of the truck.

Question 14. I understand that the Motor Vehicle Manufacturers Association has conducted tests and that a field test is now being performed in Oregon on the effectiveness of splash and spray suppression devices. Are you aware of these tests? How do these test results compare to results of tests performed by NHTSA.

Answer. The tests conducted by MVMA examined the potential benefits of splash and spray devices used on tractor and van trailer combinations. Light transmission levels through spray clouds increased with the devices installed. Tests run by Systems Technology, Inc., for NHTSA produced similar results. However, both tests also demonstrated the negative effects of even a slight crosswind on the spray reduction capability of these devices. Reports on both tests have been submitted to the agency's public docket on splash and spray devices.

The tests in Oregon sponsored by Monsanto and Schlegel, manufacturers of spray suppression devices, are not complete. We are aware of the test protocol and are awaiting the results of this program. NHTSA has not run similar field tests and therefore cannot speculate on what results these tests may show.

Question 15. What are the specific problems associated with developing automobile crashworthiness ratings? Do you believe such a rating system can be developed within the near future?

Answer. Rating the crashworthiness and safety performance of a motor vehicle is a complex and difficult task, involving a large number of technical parameters. These parameters include:

1. The representativeness of the crash mode being used in the laboratory test.
2. The variability in crash testing—due to the test procedure, test dummy, test instrumentation, and test vehicle.
3. The biofidelity, or human-likeness, of the test dummy.
4. The adequacy of the injury criteria used to predict actual human injury from dummy measurements.
5. The relationship between laboratory crash test results and real-world accident performance.

At the present time, we have tested vehicles only in frontal crashes at a specified speed of 35 mph into a fixed barrier. We are hesitant to extrapolate results from this test configuration to all other crash modes (i.e., side crashes, rollovers, rear-end crashes) and speeds. As the agency gains experience with the use of test dummies that represent human responses in these other modes, we will have greater ability to assess the feasibility of developing overall crashworthiness ratings. We are currently concluding research on a side-impact dummy, and we plan on seeking public comment on the efficacy of that device.

We are also extremely hesitant about *rating* cars based on a single crash test. Given the variability in results experienced in our Repeatability Test Program with a Chevrolet Citation, to be statistically certain that two cars actually had differences in their crashworthiness, and that the differences were not due to chance, their Head Injury Criterion Values would need to differ by 400 points. Thus, lesser differences in HIC values among cars may not be due to differences in vehicle crashworthiness at all. In addition, we do not believe that the Citation's results are necessarily applicable to all cars. We are attempting to obtain similar data on other vehicles and are conducting research aimed at reducing test-to-test variability.

In addition to the absence of a certified dummy for other than frontal crashes, dummies can currently measure only a few of the many potential causes of injury. For example, we are currently conducting research to develop a measure of abdominal injury, which causes 11 percent of harm to auto occupants. We also expect to commence a rulemaking activity in the near future to permit the use of a new frontal-crash test dummy, which has the capability of measuring neck and lower leg loads, as well as chest compression, which the current dummy does not.

Finally, a major objective in the agency's experimental New Car Assessment Program (NCAP) is to relate laboratory crash test results to real-world accident performance. The areas discussed above are all directed at improving the relationship between test results and real-world performance. Establishing this relationship will help the agency to develop an objective and meaningful crashworthiness rating system. We are actively seeking real-world data, particularly from Europe where belt usage is high (our crash tests are all run with the test dummies restrained), to determine the extent of the correlation between our test results and the actual likelihood of serious injury. Until we can evaluate those data, we do not believe the actual rating of cars for crashworthiness would be meaningful or appropriate.

Question 16. In your view, what actions should be taken by Congress, the Federal Government and States to combat the crime of odometer tampering? How significant a problem is odometer tampering?

Answer. In our view, the best step Congress could take would be to increase the maximum sentence for odometer fraud, now set at one year, to three years. This would convert the crime from a misdemeanor to a felony, making it much more likely to be prosecuted and much more threatening to odometer violators. We submitted legislation to this effect in the last Congress and would support such a bill again. The Federal Government is continuing its efforts to prosecute major violators and to help coordinate multi-State efforts to reduce the interstate traffic in cars with spun odometers. We believe this is the most productive use of our resources.

We believe the most effective step for the States would be to improve the transmittal of odometer information on the titles. Six States still have no place for odometer information on the fronts of their titles. Others have no place for odometer information on the reassignment forms on the backs of their titles. Other States have the requisite forms but do not always enforce their requirements that the forms be used. The result is that much odometer information is being lost in the titling system, thus making it much easier for odometer operators to obtain titles free of odometer information. If the present laws were to be diligently enforced, and the remaining States were to include odometer statements on their titles, we believe that odometer fraud could be significantly curtailed.

Odometer fraud continues to be a widespread and costly consumer fraud. Our current estimate is that it costs consumers approximately 2 billion dollars annually. A significant part of this fraud involves vehicles which have been used by lease companies or in business fleets. Of all passenger cars manufactured in the United States each year, almost 50 percent are sold for business use including leasing. When these cars are sold as used cars, often with high mileage, an estimated 70 percent have their odometers turned back. The consumers who buy them pay a higher price than they should, usually by more than a thousand dollars. We estimate that turning back an odometer results in an average price of $1050 per car.

Question 17. Last year, Congress enacted the Motor Vehicle Theft Law Enforcement Act. What is the status of NHTSA's implementation of this Act?

Answer. the Motor Vehicle Theft Law Enforcement Act of 1984 requires the agency to take a number of actions in accordance with a specified timetable. Section 602 calls for the issuance of a Theft Prevention Standard by September 1985. Section 603 requires that final selection of all vehicles to be covered by the Theft Prevention Standard in the initial model year be completed by October 1985. We have developed a Notice of Proposed Rulemaking establishing the Theft Prevention Standard, which is currently under review. While the statutory timetable is tight, the agency expects to complete both actions in a timely manner.

Section 605 allows manufacturers installing original equipment, anti-theft devices, to petition for an exemption from the labeling requirements of the Theft Prevention Standard for a limited number of passenger vehicles. Such petitions must be filed not later than eight months prior to commencing vehicle production for the first model year covered by the standard. Preliminary work has begun in defining the criteria for obtaining an exemption. The agency expects final procedures for processing these petitions to be issued to allow all manufacturers adequate time to meet the filing deadline.

In addition to these requirements, Section 612 of the Act requires that insurance companies report annually on vehicle thefts and recoveries, rating rules and plans, and actions taken by insurers to reduce premiums based on the anticipated or recognized effects of the Act. This information is to be collected annually and published periodically by the Department of Transportation. The agency anticipates completion of rulemaking to establish the form and content of these reports early enough to provide adequate leadtime for insurance companies in completing their initial reports.

Question 18. The Motor Carrier Safety Act of 1984 (P.L. 98-554) requires NHTSA to undertake studies on heavy truck safety, truck occupant protection, and safety-related devices. What is the status of these research efforts?

Answer. NHTSA will be designated as the lead agency within the Department for carrying out the studies under sections 216, 217, and 219 of the Act. Since we are to report to Congress on the studies within 18 to 24 months (depending on the specific study) after the date of enactment, we do not plan to begin new research. We will undertake to assemble all available technical information, including research efforts now under way, and will ask the participation of all interested parties in this process. We intend to submit a comprehensive statement of the current knowledge on these issues, an appraisal of steps that can be taken now to improve safety, and recommendations for future research. We are currently preparing work plans for each of the studies.

Question 19. I understand that NHTSA has an auto safety hotline which consumers can use to obtain information on cars. What type of information are available? How has NHTSA publicized the existence of the hotline? How many inquiries are handled each month by the hotline?

Answer. NHTSA's Auto Safety Hotline is a toll-free service that receives motor vehicle safety defect complaints and furnishes consumers with information about investigative actions, safety recalls, fuel economy ratings, crash test results, tire safety and care, child safety seats, drunk driving, odometer fraud, motor vehicle safety standards, customs procedures for importing cars, certification of imported motor vehicles, and a variety of other topics. The list of information items provided by Hotline operators is as follows:

NHTSA HANDOUT REQUESTS

01 Safety belts (a history lesson for adults)—DOT HS 806 175.
02 How many of these fairy tales have you told?—DOT HS 802 152.
03 Human collision.
04 Myths and facts about child car safety—DOT HS 806 046.
05 Child safety for your automobile—DOT HS 805 174.
06 A family shopping guide to child restraints.
07 The drunk driver may kill you.
08 Young people and alcohol.
09 How to talk to your teenager about drinking and driving.

10 Three ways to keep a friend—DOT HS 806 045.
11 Motor vehicle defects and recall campaigns—DOT HS 805 709.
12 Deleted.
13 Deleted.
14 Testing how well new cars perform in crashes.
15 Latest year crash test results.
16 New consumer tire guide.
17 Tire inflation tables for popular tire sizes.
18 Gas mileage guide (83).
19 Gas mileage guide (California) (82).
20 Consumer protection under the Federal odometer law—DOT HS 803 206.
21 U.S. road symbol signs.
22 FMVSS and procedures for importation of motor vehicles—DOT HS 805 674.
23 Vehicle owners questionnaire.
24 Motorcycle safety.
25 Motorcycle helmets, claims, and facts.
26 Travel and camper trailer safety.
27 How much do you know about drinking and driving.
28 Deleted 11/84.
51 Safety belts and child safety seats (items 01, 02, 03, 04, 05 and 06).
52 How you can help fight drunk driving (items 07, 08, 09, 10 and 27).
53 Car crash test results (items 14 and 15).
98 Other (type request).

The Department has an ongoing program to publicize the availability of the Hotline. The Hotline is a key component of the expanded program of consumer information announced by the Department on February 10, 1982. It was featured prominently in the news release announcing the renewed program, which was sent to more than 4,500 news outlets across the country. We have issued several releases since that time, and have given numerous interviews about the Hotline to reporters, consumer writers, and radio and TV news personnel.

We regularly include the Hotline number in news releases on other subjects, particularly on defect investigations and recalls. We published an Auto Safety Hotline brochure for distribution to the general public in July 1983 and a separate Fact Sheet on the Hotline in May 1984. We used the brochure in a contract with Supermarkets Communications Systems in 1983 and 1984, during which more than a million copies were distributed through supermarkets in 11 States.

The effect of our information campaign is evident in the steady increase in calls to the Hotline. In 1983, Hotline operators logged 219,000 calls. In 1984, the number grew to 240,000, a monthly average of 20,000. In the first two months of 1985, the monthly average has been 26,500. If this continues for the year, as we believe it will, the number of calls logged by year's end will exceed 315,000.

Question 20. We heard testimony that fatalities and injuries are continuing to be reported resulting from the Ford transmission park-to-reverse problem. What evidence would NHTSA need in order for there to be sufficient grounds to reopen NHTSA's inquiry into this matter? What criteria would NHTSA consider in determining whether or not to reopen this investigation?

Answer. When NHTSA closed its formal defect investigation of the Ford "park-to-reverse" problem in December 1980, the agency reserved its authority to take further action on this subject if warranted by additional facts. The Federal district and appeals courts which reviewed the 1980 settlement held that it was reasonable, given the uncertain prospects for the government to succeed in litigation on a matter involving "human factors" as well as mechanical design. Our figures indicate the reported rate of accidents, deaths and injuries since the settlement has declined significantly.

NHTSA is currently considering a petition to reopen the investigation, which was filed on March 6 by the Center for Auto Safety and others. The agency must respond to the petition by July 5. We are continuing to evaluate all reported Ford transmission incidents for any new facts that might warrant reopening the investigation, and we will carefully examine the information in the March 6 petition.

Question 21. On what date did NHTSA receive all the required documentation from the Ford Motor Company related to the transmission park-to-reverse problem? On what date was the final settlement on this matter entered into?

Answer. As part of the negotiations leading up to settlement, the agency was given access to all Ford documents relating to the park-to-reverse question. On December 27-28, 1980, a team of NHTSA engineers and attorneys travelled to Ford's headquarters in Dearborn, Michigan, and completed an on-site review of all documents then in Ford's possession. They returned with a number of documents which they entered into the agency's investigative file. The settlement was agreed to shortly thereafter and signed on December 30, 1980.

Pursuant to the settlement, the agency is continuing to direct inquiries to Ford for updated information on park-to-reverse incidents. To date, Ford has responded to 8 separate requests for data. We have sent a ninth request, for which we are now awaiting Ford's reply.

Question 22. Legislation enacted in 1982 provided for the computerization of the National Driver Register. What is the status of NHTSA's implementation of the computerized NDR provisions?

Answer. The design for the new Problem Driver Pointer System is complete. The Notice of Proposed Rulemaking outlining the agency's implementation plan was issued on October 1, 1984; the preparation of the Final Rule is largely completed; and the procurement process to award four pilot State contracts is underway.

The Advisory Committee has met three times, and made significant recommendations at its last meeting in November, primarily concerning:

a. a revised schedule in view of the evidence supporting the need for more time at both the State and Federal levels; and

b. an interim rapid response capability to satisfy State requirements pending the development of the full Problem Driver Pointer System.

Thus, several provisions of the statue have been met, implemented or put in process:

a. the Advisory Committee was established; b. rulemaking is nearly complete;

c. the National Transportation Safety Board and the Bureau of Motor Carrier Safety are now routinely using the National Driver Register, as authorized in Section 206 of the law; and

d. steps to solicit the participation of four States in a pilot test have been taken.

In addition, four States are currently transmitting records to, and receiving output from, the National Driver Register using the Remote Job Entry system, which provides the States with overnight service. Additional States are presently modifying their systems to avail themselves of this next-day service.

Question 23. How do you reconcile the safety problems posed by "gray market" imports with the trade implication of blocking direct automobile imports? How serious a safety problem do "gray market" imports present?

Answer. I am very much concerned with the possiblity that gray market cars may pose special safety problems. As indicated in my respone to Question 11, I have directed the agency to collect certain information regarding the possible safety implications of "gray market" imports. When this work is completed we will be in a much better position to assess the situation in all its aspects.

QUESTIONS OF THE MINORITY AND THE ANSWERS THERETO

Question 1. In foreign countries which have adopted mandatory seat belt laws—

(a) What is the current usage rate?

(b) How is the usage rate decreased or increased?

(c) Have traffic fatalities increased or decreased since adpotion?

(d) How have the usage laws enforced? What are the penalties for non-compliance?

Answer. (a) Current safety belt usage rates in countries which have adopted safety belt laws typically range between 60 and 80 percent.

(b) Usage rates increase substantially at the time the laws become effective. After the initial increase, usage may fluctuate upwards or downwards, but these changes are generally insignificant in comparison with the initial increase.

(c) The available evidence from foreign countries indicates that reduction in deaths and injuries following adoption of mandatory belt use laws range from about 20 to 30 percent. In Great Britain, where an intensive education program had already raised the usage level to about 40 percent, a post-law increase in usage to over 90 percent produced a 25 percent reduction in casualties.

(d) In most countries, citations may be issued for violations of the law without the presence of other violations. In some, citations may be issued only in conjunction with the issuance of a citation for another traffic offense. Data from 8 countries indicate that citations for non-use of belts comprise from 1 to 7 percent of total traffic citations.

Penalties for non-compliance of the laws vary, with most countries setting a maximum and minimum fine. Maximum fines range from $5 in Turkey to $1350 in the Netherlands. However, in most countries the fines actually imposed on violators are roughly $20. Additionally, about half of the laws provide for reduction recovery of damages in litigation for injuries sustained by unbelted occupants.

Question 2. Do the three seat belt laws (in New York, New Jersey, and Illinois) which have been passed *on their face* meet the requirements the Secretary set out in the final rule on passive restraints published in July of 1984?

Answer. We have not yet made determinations as to whether the six mandatory safety belt use laws enacted to date (New York, New Jersey, Illinois, Michigan, Missouri, and New Mexico) meet the minimum criteria set by the final rule. We will make our determinations on individual State laws well in advance of the April 1989 deadline set out in the rule. We are providing guidance to the States by distributing a model safety belt usage law which does meet the criteria set out in our final rule. We have been assisting the States in comparing the provisions of State safety belt use laws to the minimum criteria of the occupant protection rule. The subject of mandatory use laws is being actively considered in many other States legislatures. The public debate over what features those laws should contain, including the content of the State's enforcement program, is healthy and contributes to public awareness of the importance of safety belt use.

Question 3. When will NHTSA be able to come up with a bumper rating program?

Answer. As directed by the House Committee on Appropriations, the agency submitted a report on the Consumer Information Program on Bumpers, dated January 1984. The report outlined four tasks involved in developing an objective and meaningful methodology for assessing bumper performance in low-speed front and rear collisions. These four tasks were:

1. The development and demonstration of an experimental bumper test methodology (i.e., test speed, test angles, etc.). Eight vehicles to be tested with the methodology.
2. The expansion of the testing to include 15 vehicles.
3. The verification of test results with on-road experience, based on insurance data.
4. The development of methods for the dissemination of bumper performance information to consumers.

Task 1 was completed in August 1984, with a test methodology including Part 581 (bumper standard) pendulum impacts at the front and rear bumper corners, each at a different speed—5 and 7 mph rear, and 6 and 8 mph front. In line with Task 3, a preliminary analysis indicated that a general relationship exists between the test results and overall insurance claims for the eight vehicles tested.

Testing under Task 2 was completed in February 1985. A full comparison of the laboratory test results of the first eight vehicles with insurance claims data on low-speed, bumper-involved front and rear accidents is currently under way. A second comparison of laboratory test results and insurance claims data will be made using the results of the 15 cars tested under Task 2. Additionally, under Task 4, a consumer study is planned to determine the best methods for formatting and disseminating the bumper performance information. We expect to complete out internal analyses this summer, at which time we will make decisions regarding the future direction of the Consumer Information Program on Bumpers.

Question 4. The National Automobile Dealers Association has completed a survey which found that 99% of "gray market" cars were not in total compliance with U.S. safety and emissions standards. Does that indicate that there is a problem with these cars?

Answer. The survey of gray market cars conducted by the National Automobile Dealers Association (NADA) has recently been received by the agency and is currently being reviewed. While I remain concerned about the extent to which vehicles are being properly modified to be in compliance with our standards, there is nothing in our experience that would lead us to believe that non-compliance is as widespread as the NADA survey would suggest. I should point out that not every nonconformance observed after release of a vehicle is necessarily a safety standard violation, and the NADA study did not disclose the extent of noncompliance in the vehicles surveyed. the Vehicle Safety Act does not prohibit a vehicle's owner from modifying the car to take it out of conformance with our standards, and the existence of such vehicles does not, by itself, make the case that a particular modification was not made. It is easy, for example, for an owner to reinsert the European-style headlights that came on his imported car, even if U.S. headlights were installed for certification purposes. This action would be perfectly legal under the Vehicle Safety Act, and an observation of European-style lights would not necessarily mean that a fraudulent certification was provided the Government.

In the same vein, other observations of noncompliance reported in the survey could involve vehicles owned by diplomats or other persons exempt from compliance by the import regulation itself.

Question 5. In 1980, 1,500 gray market cars were brought into the U.S. The number has now risen to 40,000 in 1984. Does NHTSA need additional funds to ensure these cars meet U.S. safety standards?

Answer. The gray maket importation surveillance program is part of the broader vehicle safety compliance program covering all vehicles and equipments certified by the original manufacturers as conforming to the requirements of the Federal Motor Vehicle Safety Standards. While the budget proposal as submitted is considered adequate for the overall purpose, a continuing increase in the number of gray market vehicles imported will affect the level of activity in the other areas of compliance testing to accommodate the increased cost of computer and processing support in the gray market surveillance program.

The CHAIRMAN. Next we have the Honorable Vincent Fumo, State senator from the First District of PennysIvania.

STATEMENT OF VINCENT J. FUMO, STATE SENATOR, FIRST DISTRICT OF PENNSYLVANIA

Mr. FUMO. Good morning, Senator.

The CHAIRMAN. Good morning, Senator Fumo. Thank you for being with us.

Mr. FUMO. Thank you for having me. Thank you for allowing me to present the perspective of a legislator that is from a State that is attempting to address the issue of mandatory use of seatbelts.

I would like to state at the outset that I am a confirmed advocate of airbags as the most effective passive restraint system yet designed. In Pennsylvania last year 1,752 people were killed and another 126,000 were injured in automobile accidents. Studies have shown that 90 percent or nearly 1,600 of these people who met their deaths were sitting in the front seat. Our Pennsylvania Department of Transportation tells me that 65 percent, or over 1,100, of these victims were not wearing their seatbelts, and that only approximately 10 percent of Pennsylvania motorists wear seatbelts at any given time.

Studies done by the Department of Transportation show that airbags alone reduce the fatalities by 65 percent, and that airbags coupled with seatbelts reduce fatalities by nearly 80 percent. That translates out into over 1,000 lives that could have been saved in Pennsylvania just last year alone. Who knows what the reduction in nonfatal injuries would have been.

The Secretary of Transportation ruled some time ago, I believe July of last year, that if States representing two-thirds of the population of the United States pass mandatory seatbelt laws, auto manufacturers need not include as standard equipment passive restraints.

We, in Pennsylvania, recently enacted legislation for mandatory child restraints and are now contemplating legislation introduced in both the House and the Senate which could mandate the use of seatbelts by all front seat occupants of an automobile.

This action, which is necessary to curb the needless loss of life and limb on our Pennsylvania highways, should not preclude a national legislative mandate for the use of passive restraint systems. It seems that Secretary Dole believes that a State's action in passing mandatory seatbelt legislation without the use of passive restraints is the solution to our increasing highway fatality crisis.

This is not the case. Seatbelt legislation would be helpful in addressing this problem, but it is not the cure. Many motorists in Pennsylvania and in other States choose not to wear their seatbelts. The implementation of mandatory State laws requiring their use, of course, will motivate some individuals to wear their belts, but a large number of motorists in Pennsylvania and in other States will continue to drive on our highways unrestrained. We need a combination of mandatory seatbelt laws along with factory-equipped airbags in new automobiles in order to significantly decrease the number of highway fatalities in Pennsylvania and across the Nation. The current position of the Department of Transportation will merely remove from the spotlight the need for passive restraint systems, namely airbags, and place State legislators in the practical dilemma of having to essentially choose between seatbelts or airbags or nothing at all.

It is incumbent upon the Congress to take hold of this situation and require automakers to install passive restraint systems as standard features in new automobiles. To allow the States to pass difficult to enforce, mandatory seatbelt laws in an effort to appease the automakers is a great disservice to the citizens of this Nation, and in the end will not go far enough in reducing the number of traffic fatalities.

At this time, Senator, if you would indulge me, I have with me today a videotape using Government footage to show the, should I say, inadequacy of seatbelts involving crashes, and also show the effective use of airbags. And we would like to show that, if we could, at this time, and then I would like to ask you another question or two, if I may.

[A videotape was shown.]

Mr. FUMO. These are 35-mile-an-hour tests with 10 cars. This is an old Cutlass Supreme with seatbelts on. You can see the face injuries and the neck injuries are obvious.

A Chevy Caprice. And again, the head smashes into the steering wheel, and the passenger hits the dashboard.

A Ford Expo. And again, the same serious injuries.

A Toyota Tercel. Very serious.

A Plymouth Colt Vista. The steering wheel comes up to meet them in the face.

A Ford Tempo. Again, the steering column comes right into the face.

A Renault. Again——

The CHAIRMAN. These are with seatbelts?

Mr. FUMO. With seatbelts and with the shoulder strap, too.

This is a Pontiac.

A Mitsubishi Monterro.

The Nissan Stanza. Again, very severe injuries.

Now we have one at 30 miles an hour with airbags. We admit the 5-mile an hour difference, but we do not have a film for 35 with an airbag at this point in time.

This is a 1984 Ford Limited. You can clearly see the difference. And there are others.

That concludes that tape.

One of our problems, Senator, that I see as a State senator from Pennsylvania, I was approached by one of my colleagues who wanted to introduce a seatbelt law, and I thought that was a good idea. But we are faced with the dilemma of not knowing how to pass a seatbelt law that would not trigger the cutoff of airbags. We have no guidance from the Department of Transportation on that issue.

If we could get that, then we would be able to go ahead and pass seatbelt laws. As a result, I have asked my colleagues to put on hold this issue for awhile, and that puts me in the dilemma of also doing a disservice to my constituents that I think should have seatbelts on in the first place. And it puts us in an extremely untenable position of having to make that choice. We need some guidance from the Department of Transportation, or perhaps the Congress just has to mandate it on its own and forget the Department.

I was not overly impressed with Ms. Steed's testimony in that area. I think it is more or less a question of philosophy. If you want to go in that direction, you can go in that direction. If you do not want to go in that direction, you can wait for studies, you can delay.

I would also like to say as an aside, I am glad that you get the same kind of unresponsiveness from some bureaucrats as I get in Harrisburg when you ask questions, although I must say it is a higher caliber at this level.

The CHAIRMAN. Senator, thank you very much. Very good testimony.

I know what you mean by the dilemma, because, you know, I faced it when I was fishing. Really it was well, gee, that is better than I thought it would be, you know, and so that is good, I encourage you. And then you begin to see what the effect is when you pick up the paper and read that a State has passed a mandatory seatbelt law, and you do not know whether you are happy or sad.

I think you are right. I think that airbags are the way to go. I think that this is proven technology, and it is reasonably priced, and there is no reason not to do it except for the fact that the administration, for really ideological reasons, I think, has decided that airbags are almost the example of government regulation which has run amok. And there is something, you know, the very name airbag sounds funny. Airbag, this has to be crazy. And then people have all of these fears that the airbags are going to explode in their faces as they are driving, totally unfounded, totally unfounded.

Mr. FUMO. That would be the problem that exists also if airbags were offered as an option. People take confidence in government when they say that this is the way it should be. If you go to a car salesman who is trying to make a sale, to keep the cost of the car down as much as possible he will probably argue against airbags by giving that kind of data, and the person is going to get very afraid of that, and that is going to make the process even more difficult to put together.

I think the only answer is to mandate it somehow. And when we talk about Government intervention, I think the citizen gets more offended that he is going to get a ticket for not wearing a seatbelt that he can optionally put on or off than he is if the passive restraint system is there.

We talk about intrusion and regulation in business. What about intrusion and regulation on the individual motorist? He views that as his little domain, and it is almost like telling him he has to do something in his home to tell him he has to do something in his car. And then we invade his privacy, and we have a myriad of other search and seizure problems if you have a belt system that is not clearly visible from the road for the officer to see. I do not want cars stopped on highways just because he thinks the guy might not have the lower system on.

The CHAIRMAN. Undoubtedly, airbags are less intrusive than mandatory seatbelt requirements, but that is not the way the administration chose to go.

You heard my description of the Missouri bill when Ms. Steed was the witness. Does that strike you as being a bona fide effort by the State legislature to pass something which is going to be an effective mandatory seatbelt law, or does it strike you as being something that simply goes through the motions and which is really not intended to be effective at all, but simply to meet the Federal requirement in order to prevent or cut off the installation of airbags in order to appease the automobile companies?

Mr. FUMO. We, too, want the Saturn plant in Pennsylvania, but no one has asked us to pass the seatbelt law to get it. I do not honestly know what the motivation of the Missouri Senate was, but I would think that they are probably stuck with the same dilemma, some of the conscientious people that are there. There may have been some that said look, let us pass this thing and get it over with, and get the Saturn plant, if in fact that is part of their strategy to get it.

But I think I look at that law and say to myself well, how do you draft legislation that would legitimately say—permit an exemption on handicapped people or whatever, and you talk about medical reasons. Do I want to, in legislation, draft a number of specific instances? I will be there forever if I do that. How much do I want to fine a person for not wearing a seatbelt? Again, we get back to this true American philosophy, I think; that that car is the same as their home, and it is an invasion of privacy.

That is why I think that, on the one hand, in drafting the mandatory seatbelt laws that we will probably do in Pennsylvania, if we are not faced with the problem of cutting off airbags, we have got to really consider that. And we want to urge people, we want to force them in some way; but I do not want to make it a felony not to wear a seatbelt. So do I want to make it a $10 fine, a $20 fine? Perhaps I make it as much as maybe a speeding violation, which I think currently is around $30 or $40. But we constantly come back to that dilemma. I do not think that that is the way of choice.

The best way and the way to most effectively help people is to put the seatbelt in there because it is going to work whether they think of it or not. It is going to be there for them. It is not going to require an extra effort.

I think if we really take the philosophy that Government is about protecting people in this instance, then how better to protect them than the most effective area and also the most highly technological way to do it with the least restraint on them as citizens.

But now if we are just playing games, we can do a myriad of games; but if we are really about protecting the individual in the vehicle, and we want to protect you in your car, then airbags is the only way to go. It is the only thing that is going to work.

The **Chairman**. You are saying that it is much more big brotherism for government to try to alter people's behavior by passing criminal laws to attempt to change the way they function in their lives.

Mr. **Fumo**. Absolutely.

The **Chairman**. Than it is to say to the auto manufacturer put in something which people are never going to see until they are in a 25-mile an hour crash.

Mr. **Fumo**. Exactly. When we pass criminal laws that way, all we do is create another sociological problem by making people have less respect for the laws that we really want them to abide by, be they, you know, theft, bribery, corruption or anything else, or murder. If we continue to tell even children of a young age that it is against the law not to wear your seatbelt but we do not wear it anyway, well, what else is against the law that I can do—marijuana, drugs, or whatever else. We begin to create a huge problem sociologically with the population with regard to respect for law and order. People do not respect laws, because sometimes they are unreasonable, they are nonrealistic, and they are not going to honor them anyway. So why let that spill over into the other areas of criminal law where society really needs people to respect those values.

The **Chairman**. Senator, your testimony has been very helpful, and also the film, and I appreciate you being here.

Mr. **Fumo**. Thank you very much, Senator.

[The following information was subsequently received for the record:]

Senate of Pennsylvania,
Philadelphia, PA, March 27, 1985.

Hon. John C. Danforth,
U.S. Senate, Committee on Commerce, Science and Transportation, Washington, DC.

Dear Senator Danforth: Thank you for your letter and further inquiry regarding my support of the use of airbags.

Your first question was: "Why do you believe that installation of airbags in cars is so important?" The statistics which I have seen from studies provided by the AAA indicate that airbags are the most effective restraint yet discovered for front seat passengers. The preponderance of injuries and fatalities as you know are to occupants of the front seat.

I would bring to your attention the video tape I left with your committee which demonstrated significant head damage using seat belts at 35 MPH, and no head damage using airbags at the same speed.

Further, since the Pennsylvania AAA reports that only about 10% of the motorists in this state use seat belts regularly, a passive system such as airbags becomes an even more essential system.

Your second question asked whether I felt if enough states enact mandatory seat belt laws is it likely that passive restraints will ever be available on a large scale basis to the American consumer.

In my opinion, if passive restraint systems such as airbags are not mandatory pieces of equipment the consumer will not, in reality, have these systems available. As you know, optional equipment on automobiles costs the consumer extra. If passive restraint systems are not mandatory I doubt seriously that the automobile manufacturers will include them as standard equipment.

In fact, there is probably a disincentative built into the optional equipment concept of passive restraint systems. If these systems are to be optional, the price of an automobile will be higher and the average auto salesman certainly will not promote the system if it will jeopardize his ability to make a sale.

In summary, I feel that airbags save lives. Any trend that jeopardizes their mandatory use in this country in my opinion, will jeopardize the lives of thousands of good honest, hardworking Americans.

Sincerely,

VINCENT J. FUMO,
State Senator.

The CHAIRMAN. The next witness is Mr. Brian O'Neill, executive vice president, Insurance Institute for Highway Safety.

STATEMENT OF BRIAN O'NEILL, EXECUTIVE VICE PRESIDENT, INSURANCE INSTITUTE FOR HIGHWAY SAFETY

Mr. O'NEILL. Thank you, Senator.

When NHTSA rolled back the Federal bumper requirements from 5 to 2.5 mile per hour, it said that the marketplace would determine what kind of bumpers new cars would have. If consumers wanted 5 mile per hour bumpers, the agency said, competition among car manufacturers would ensure their availability. But that has not turned out to be the case. Consumers find it difficult to choose to buy cars with 5 mile per hour bumpers because in most cases manufacturers do not tell us what level of protection their bumpers provide. When information is provided, it is not necessarily accurate. And what is worse, NHTSA is not supplying independent confirmation of manufacturers' claims about bumper performance as it promised to do.

This situation is especially confusing because manufacturers are equipping their cars with bumpers of varying degrees of protectiveness. They are also changing the performance of the bumpers on some of their models from one year to the next.

ATTACHMENT A.—BUMPER PERFORMANCE OF 1985 MODELS

[Based on information from public record and statements by manufactuers]

	Strong 5 mph	Weak 5 mph	Less-than 5 mph	Not specified
AMC-Renault:				
Eagle				X
All other models)		X		
Audi (all models)				X
BMW (all models)		X		
Chrysler:				
All front-wheel drive			X	
All rear-wheel drive	X			
Ford (all models)		X		
General Motors:				
Chevrolet Spectrum			X	
Chevrolet Sprint			X	
Pontiac Firebird			X	
Pontiac 6000 SW			X	
All other models		X		
Honda:				
Accord		X		
Prelude		X		
All other models			X	
Isuzu (all models)			X	
Mazda (all models)				X
Mercedes-Benz (all models)		X		
Mitsubishi (all models)			X	
Nissan:				
Sentra				X
All other models		X		

ATTACHMENT A.—BUMPER PERFORMANCE OF 1985 MODELS—Continued

[Based on information from public record and statements by manufactuers]

	Strong 5 mph	Weak 5 mph	Less-than 5 mph	Not specified
Peugeot (all models)	X			
Porsche:				
911			X	
All other models		X		
Saab (all models)			X	
Subaru (all models)			X	
Toynta (all models)		X		
Volvo:				
700 Series		X		
All other models			X	
Volkswagen (all models)			X	

Honda, for example, equipped its 1980 through 1982 cars with strong 5-mile-per-hour bumpers, because it was required to do so by the Federal Government. Then Honda put weak bumpers on its 1983 and 1984 models. It has now improved the bumpers on its 1985 Accord, but not on its Civic models.

Other manufacturers, including General Motors, put weakened bumpers on some of their models after the rollback of the Federal requirements. But these manufacturers provide no information to consumers about the bumper performance on their various models, so car buyers are not aware that the bumpers on similar cars may vary widely in performance.

For the marketplace to work, consumers need reliable information about the bumper performance level of each available car model. Manufacturers and NHTSA should be providing this information, but as of now they do not.

Now, because the variety of bumper performance is so great among 1985 models, it is helpful to group new car bumpers into three categories based on their performance in 5-mile-per-hour tests. Let me explain and I will show it on the videotape.

BUMPER PERFORMANCE LEVELS

Strong 5 mph bumpers:
  No damage to bumper or car body in 5 mph crash tests.
  Required by federal standard on 1980-82 model cars.
Weak 5 mph bumpers:
  Damage to bumper (none to car body) in 5 mph crash tests.
  Required by federal stantards on 1979 model cars.
Weakest bumpers (less than 5 mph):
  Damage to car body in 5 mph crash tests.

There are strong 5-mile-per-hour bumpers. These were required on 1980 through 1982 models under the Federal no-damage bumper standard. They eliminate damage to the car and to the bumper.

The next group are weak or only so-called 5-mile-per-hour bumpers, because they prevent damage to the car body but allow damage to the bumper itself. Compared to the bumpers on 1980 to 1982 model cars, these are far less protective.

Then there are the weakest bumpers, those that do not prevent damage even to the car body.

According to information from car manufacturers, most 1985 models fit into the second category of weak or only so-called 5-mile-per-hour bumpers, which are not nearly as strong as the 5-mile-per-hour bumpers we used to have on cars.

The Institute's 1985 low-speed crash test results illustrate dramatically just how weak these so-called 5-mile-per-hour bumpers often are. Honda, as I mentioned earlier, improved the bumpers of its Accords from the 1984 to the 1985 model year by equipping them with energy-absorbers, as it had during the years when strong 5-mile-per-hour bumpers were required.

Because of this improvement, damage in the 5-mile-per-hour tests were substantially reduced. Let us look at the film. On top we see the 1984 Accord with the weakest bumper system, and underneath it is the 1985 Accord with an improved but still weak 5-mile-per-hour bumper; $350 damage for the Honda with the weakest bumper system, reduced to $36 for the 5-mile-per-hour, weak 5-mile-per-hour system on the 1985 model.

Also, improvement is seen in the flat rear-into-barrier test, from $470 down to $33; and also a big improvement in the 5-mile-per-hour, rear-into-pole test, although there is still $527 damage to the 1985 Accord.

Clearly, the 1985 Accord's bumper system is improved compared to the 1983 and 1984 models. But consumers should be aware that these improved bumpers are not as strong as they were on the 1982 Accords. Also, Honda Civics still have the very weakest bumpers, those that fail to prevent damage even to the car body in 5-mile-per-hour tests.

For a story very different from that of Honda, look what happened when General Motors redesigned the rear bumper on the 1985 Oldsmobile Cutlass Ciera. The 1984 Cutlass Ciera had strong 5-mile-per-hour bumpers and sustained less than 300 dollars' worth of damage in the 5-mile-per-hour, rear-into-pole test.

In the same test, the 1985 Ciera equipped with a new weak 5-mile-per-hour bumper sustained more than three times as much damage. Let us look at the film. On the top we have the 1984 Cutlass with strong 5-mile-per-hour bumpers and underneath we have the new weakened so-called 5-mile-per-hour bumpers.

The damage has gone from $288 for the 1984 model to $923 in the 1985 model. Plus, this new weak bumper system on the 1985 Ciera weighs more than the bumper on the 1984 model. This directly refutes NHTSA's claim, when it rolled back bumper requirements in 1982, that consumer benefits would result from weaker bumpers because they would weigh less. In fact, that weaker bumper weighs more.

Two other 1985 cars with weak 5-mile-per-hour bumpers, GM's Oldsmobile Calais and Pontiac Grand Am, sustained more than 100 dollars' worth of damage in the front-into-barrier test. This is the least demanding kind of 5-mile-per-hour crash test, the kind that all 1980 through 1982 models were required to withstand with absolutely no damage.

Let us look at a film of these tests. This is the Oldsmobile Calais with weak 5-mile-per-hour bumpers, 139 dollars' worth of damage, which used to be required to be zero in that test under the old 5-mile-per-hour standard. And here is the Grand Am. GM says that the Grand Am has weak 5-mile-per-hour bumpers and we have said on the film that it is a weak 5-mile-per-hour bumper. But in this test there was damage to the car body, indicating that the claim is not correct.

Let us turn now to Ford. Ford's 1985 Thunderbird was one of the best models we tested this year, but its bumpers still are not as strong as those on 1980 to 1982 models made by the same manufacturer. Ford advertises that its cars have 5-mile-per-hour bumpers, but they are weak 5-mile-per-hour bumpers.

Let us look at the film of this car. This is a 5-mile-per-hour test into an angle barrier, 233 dollars' worth of damage. And this is 5-mile-per-hour into a pole, 356 dollars' worth of damage. In contrast, the 1981 Ford Escort sustained no damage at all in these two tests 4 years ago.

Finally, we tested the Nissan 200 SX, and here is where you can see just how weak so-called 5-mile-per-hour bumpers can be; $868 damage to a car with so-called 5-mile-per-hour bumpers in a 5-mile-per-hour test into an angle barrier; and over 1,100 dollars' worth of damage in the 5-mile-per-hour test into a pole. These are so-called 5-mile-per-hour bumpers.

As the results of the film show very clearly, bumpers today come in all sizes and shapes and performance levels. The so-called 5-mile-per-hour bumpers on today's cars are not as protective as the strong 5-mile-per-hour bumpers that used to be required by Federal standard. In fact, there is nothing to stop a car manufacturer today from calling any bumper it wants to a 5-mile-per-hour bumper.

ATTACHMENT C.—5 MPH CRASH TEST RESULTS, DOLLAR AMOUNTS OF DAMAGE REPAIR COSTS, INSURANCE INSTITUTE FOR HIGHWAY SAFETY

	Front-barrier [1]	Rear-barrier [1]	Front-angle-barrier [2]	Rear-pole [2]
1984 Honda Accord	350	470	338	1,047
1985 Honda Accord	36	33	410	527
1984 Oldsmobile Ciera	0	0	313	288
1985 Oldsmobile Ciera	0	33	469	923
1985 Oldsmobile Calais	139	52	514	286
1985 Pontiac Grand Am	289	216	570	434
1985 Ford Thunderbird	0	0	233	356
1985 Nissan 200SX	0	0	868	1,112

[1] In contrast: All 1980–82 models sustained $0 damage in front- and rear-barrier crash tests.
[2] In contrast: A number of 1980–82 models sustained little or no damage in one or both of these tests (front angle and real pole).

The result is that the "5-mile-per-hour" label has lost its meaning. It applies to such a wide range of actual bumper performance that consumers cannot know from it what degree of protection a particular bumper provides.

This situation is not being helped by NHTSA's failure to provide the consumer information program on bumpers that was called for in the Motor Vehicle Information and Cost Savings Act of 1972. The agency promised that such a program would do the following:

> Provide consumers with independent confirmation of manufacturers' bumper performance claims to assure that purchasing decisions are based on the most accurate information available. In this way, maximum marketplace freedom for informed selection would be encouraged, and consumers would be provided with the opportunity to purchase additional bumper protection.

This program is not in place. Car bumpers can be designed to prevent virtually all damage in low-speed crashes. Consumers have indicated they want such bumpers and manufacturers have shown that they can provide them. In fact, automakers successfully equipped their cars with strong 5-mile-per-hour bumpers when they were required to do so by Federal standard.

They still should be required to do so. But until they do, consumer information is essential. NHTSA should immediately begin providing sufficient and accurate information so that car buyers can make informed choices about the bumper protection levels they want to purchase.

Now, Senator, today's testimony, at the request of your committee, has focused on low-speed crash protection. But in view of the other testimony today, I would like to say a few brief words on the issue of occupant protection.

The Institute continues to be concerned that the Department of Transportation's ruling on occupant protection creates the appearance of a conflict between seatbelt laws and automatic restraints such as airbags where none should exist.

Seatbelt laws and automatic restraints are not an either/or proposition. We need both, and I agree we need effective seatbelt laws, not sham laws. In its ruling, DOT clearly recognized that airbags in particular offer improved protection for everyone. For belt users, whether they are voluntary users or coerced by a law, an airbag offers enhanced protection, especially to the very vulnerable faces and heads, which often hit steering columns, as you saw in the earlier film, dashboards or windshields, even when wearing a belt.

As DOT recognized, the combination of an airbag plus a belt is the best occupant restraint system yet developed, and for nonbelt users—and there will be many of these even with successful seatbelt laws—the airbag will offer much improved protection.

Both DOT and many of the automobile manufacturers have recognized that airbags work. There really are no serious technological impediments to their use. Unfortunately, some of the groups lobbying for State seatbelt laws are spreading disinformation about airbags and claiming that the DOT rule has forced the States to choose seatbelt laws in order to prevent these dreadful airbags.

To the extent that this committee can influence the content of DOT's occupant protection education program, I hope you will urge it to devote as much of the resources of that program as necessary to counter this disinformation.

Thank you.

The CHAIRMAN. Thank you, Mr. O'Neill.

The justifications that were given for the 2.5-mile bumper were that it would save fuel and that it would save costs. Are those good justifications?

Mr. O'NEILL. Well, the Department claimed that there would be some savings in costs and fuel consumption with the weaker bumpers and these savings would more than offset the increased damage. In fact, we can see no evidence of any price reductions for these weaker bumpers.

And the fuel savings, to the extent that they do exist—and in some cases, as you saw with the Ciera, the weaker bumpers actually weigh more, so the fuel consumption increases. But even in cases where there have been weight reductions—for example, the Honda Accords when they went to very weakened bumpers on the 1983 and 1984 models did reduce the weight of those bumpers—the fuel savings amounted to about 2 gallons of gasoline per car per year. And in exchange for that, the owners of those cars have seen damage increases on the order of 30 percent.

The CHAIRMAN. Now, in prior years that we have had hearings on this question and have asked for any kind of argument in favor of the weak bumper, we have had no logical argument offered. And the cynical suggestion is that in fact the auto companies are in the business of selling parts, and therefore when you have a weak bumper you can do a better parts business.

Do you share that cynical view, or are you a more optimistic sort than that?

Mr. O'NEILL. I would like to be more optimistic, but when I see some of the designs that are used for some of the bumpers, one begins to wonder what the motives really are. There is no justification for these weaker bumper systems. They are just costing consumers money and they are increasing the sales of crash parts.

The CHAIRMAN. Thank you very much, sir.

[The following information was subsequently received for the record:]

QUESTIONS OF THE CHAIRMAN AND THE ANSWERS THERETO

Question. In your view, is there any way in which a 2.5 mph bumper standard can be considered cost-effective?

Answer. When the National Highway Traffic Safety Administration (NHTSA) rolled back the federal bumper standard from 5 to 2.5 mph; it claimed that, although weaker bumpers would result in more damage, this would be more than offset by reductions in new car prices and gasoline savings, because the weaker bumpers would weigh less. A careful examination of the analysis used by NHTSA to justify its decision, however, reveals that the foundations of the analysis were based entirely on guesswork—so-called "engineering judgement".

As a result of the rollback, there in now real-world experience with weaker bumper systems and the guesswork can be replaced with facts. The increases in insurance losses under collision coverage alone—and this covers only one portion of the crash damage—are substantially greater that the *total* increases in damage estimated by NHTSA. As the attached *Collision Loss Bulletins* from the Highway Loss Data Institute show, damage under collision coverage has increased by 30 percent or more because of weaker bumpers. These increases clearly outweigh any reduction in new car prices or in gasoline usage because of reduced weights of the weaker bumpers that may have occurred.

The damage increases under collision coverage are so great that a complicated cost-effective analysis is not necessary. It is clear that 5 mph bumpers are much more cost-effective than 2.5 mph bumpers.

Question. In your testimony, you urged that the Department of Transportation be asked to devote as many resources of its seat belt/passive restraint education program as necessary to counteract the disinformation about airbags. Are there any specific educational efforts which you believe would be of particular use?

Answer. I believe there is value in providing basic information about air bag technology to the general public. In particular, I believe it is very important to provide information showing that air bags clear supplement protection offered by seat belts, by providing extra protection to the face and head, which are vulnerable in higher speed crashes even when belts are worn.

QUESTION OF THE MINORITY AND THE ANSWER THERETO

Question. NHTSA has argued that 5 mph bumpers, while stronger, do not provide the maximum feasible reduction in costs—taking into account those drivers who are not involved in low-speed crashes. Do you agree?

Answer. As the answer to the first written question posed by Senator Danforth explains, NHTSA substantially underestimated the increased damage that would result from weaker bumpers. The attached Collision Loss Bulletins clearly show that car with weaker bumpers have generated increases in collision coverage damage of 30 percent or more. This increase is for all cars insured—not just those involved in low-speed crashes. Clearly, the 5 mph bumpers reduce the operating costs of cars for *all* owners, compared to the weaker 2.5 mph bumpers.

QUESTIONS OF SENATOR RIEGLE AND THE ANSWERS THERETO

Question. Can you say with certainty that lower insurance premiums will be the result of stronger bumper requirements? If so, what evidence can you offer to support your contention?

Answer. The collision coverage premiums for individual makes and models are influenced by a number of insurance rating factors including the actual loss experience of the particular make and model. Cars with poor collision coverage loss experience have higher insurance rates and vice-versa. As the attached *Collision Loss Bulletins* clearly show, the collision coverage losses for cars with weaker bumpers have increased by 30 percent or more. This poor loss experience in turn is reflected in the premium charged for such cars under collision coverage.

The CHAIRMAN. Next we have a panel: Joan Claybrook, president of Public Citizen; Ben Kelley, president, Lesnick & Co.; Clarence Ditlow, director, Center for Auto Safety; and Katherine McCarter, executive director of American Public Health Association.

Ms. Claybrook, would you like to go first.

STATEMENTS OF JOAN CLAYBROOK, PRESIDENT, PUBLIC CITIZEN; A. BENJAMIN KELLEY, PRESIDENT, LESNICK & CO.; KATHERINE S. McCARTER, EXECUTIVE DIRECTOR, AMERICAN PUBLIC HEALTH ASSOCIATION; AND CLARENCE DITLOW, DIRECTOR, CENTER FOR AUTO SAFETY

Ms. CLAYBROOK. Thank you, Mr. Chairman.

I would like first to clarify the record about the Ford transmission case, if I might for one second. When Secretary Goldschmidt considered my recommendation for recall of those vehicles, there was never any question about the technological issues.

It was his belief that if the Department of Transportation made a finding of a defect—and Ford had made it very clear that they would not recall the car, but would engage in litigation—he believed that the result upon the transition to the new administration would be that the case would be settled immediately and consumers would be worse off than they were with the arrangement that he made, which was that Ford had to send a notification to every car owner with the sticker and a very tough letter which explained exactly what the defect was and what the initial determination of a defect had stated.

The agreement with Ford also stated that, should additional information be developed, then the case would be reopened. And it is my understanding that Secretary Goldschmidt talked to Secretary Lewis about that, about that decision.

Those are the facts of the case. That is the reason the decision was made as it was. I believe that we should have made a final determination of a defect. It was a judgment call and he made that decision so that everyone would be notified.

Clearly, the events since December 1980 indicate that this is a defect. I do not think there is any question, should you call the technical engineers at the Department of Transportation here to testify, that they would tell you that there is a mechanical defect in that car. There is a clear distinction between the designs of the Ford on the one hand and General Motors and Chrysler systems on the other. Enormous documentation has been developed on this and that case should be reopened and those cars should be recalled.

The CHAIRMAN. We will start your time over, but I want to ask you a question on this point. As I understood Ms. Steed's testimony, she claims that it is not yet clear that there is a defect in the Ford transmission and that it may just be the way people drive their cars.

It is your view that this is not correct and that the Ford transmission is defective, is that right?

Ms. CLAYBROOK. That is correct. There are several different transmissions and there are two major designs in general, and there are two different defects. But they both are mechanical defects, and the only remedy, the only way to stop this death and injury, which is the largest amount of documented evidence that the agency has ever had on any defect in its history, is to fix those cars.

And in addition, time is of the essence, because there is a statute of limitations that says the cars do not have to be recalled more than 8 years after their date of manufacture. And so the delay to date has already resulted in about half of the cars that would have been recalled under the 1980 decision to no longer have to be recalled.

The CHAIRMAN. Would you describe in lay terms what the nature of the defect is?

Ms. CLAYBROOK. The defect exists in several different parts of the transmission system. The major defect is in a spring in the lower part of the transmission which is not strong enough and allows the transmission to move from park to reverse.

There is also an improper design or a poor design up in the rooster comb in the steering column part of the transmission, the gear shift system itself, which allows the transmission to roll easily from park to reverse. So both of those together combined make it likely that a car, if the gear, the gear down in the transmission, does not lock—and it is like a roulette system; sometimes it does, sometimes it does not, and every manufacturer knows that.

If it does not lock, then there is a possibility that any of those cars could move from park to reverse, and this has happened for cars whose engines have been turned off and been sitting in the driveway or the garage, because there is some pressure in the transmission fluid that sometimes even moves it on its own when no one is around.

I think if you look at the epidemiological evidence here, you will see that the majority of people who have been killed and injured by this system have been children and elderly people, because, in the case of children, they are totally innocent victims that have just been around the cars and run over; and in the case of elderly people they have attempted, with a real sense of responsibility, to stop the car as this starts to happen, when they see it happening, and they are incapable, physically incapable of doing it.

And we did look very carefully at all of the human factors evidence, and the major thing that we discovered was that the people being injured and killed are those who are least capable of controlling the system when it occurred.

The CHAIRMAN. What do you think should be done now? What should NHTSA do?

Ms. CLAYBROOK. Well, I think that NHTSA ought to reopen this case and make a finding of a defect. All of the evidence is there. I would be happy to submit for the record a 15-page memorandum that I wrote on October 3, 1980, to the Secretary of Transportation which very clearly spells out exactly what the defect is, what the problem is, and why it should be recalled.

And I would like to make that a part of the record because it has been used in a number of product liability cases, which has been the only remedy after the fact, after people have been injured, for this particular problem.

The CHAIRMAN. I would appreciate your submitting that and it will be included in the record.

[The following information was subsequently received for the record:]

HS Form 121 (Rev. 11/77)
UNITED STATES GOVERNMENT
Memorandum

U.S. DEPARTMENT OF TRANSPORTATION
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

SUBJECT: ACTION: Ford Transmission Case

DATE: OCT 3 1980

In reply refer to:
NOA-30

FROM : Joan Claybrook Joan Claybrook
National Highway Traffic Safety Administrator

TO : The Secretary

Subject to your approval I intend to make a final determination that all 1970-1979 Ford vehicles equipped with FMX, C-3 and C-4 automatic transmissions contain a defect which relates to motor vehicle safety and to order Ford Motor Company to remedy its 1973-1979 vehicles equipped with these transmissions, as required by the Traffic Safety Act. Approximately ten million vehicles in service would be affected by this order. If this recall follows prior patterns, approximately half of these vehicles will actually receive the necessary repair.

I also believe that 1970-1979 Ford vehicles equipped with C-6 and JATCO transmissions contain a defect which relates to motor vehicle safety. However, since the remedy for these vehicles may be simpler than for vehicles with FMX, C-3 and C-4 transmissions, I believe we may be able to negotiate this matter with Ford and therefore plan to initiate settlement negotiations prior to a final determination regarding C-6 and JATCO transmissions.

Confirming our analysis of the problem, which is set out below, is a set of design changes which Ford made in all affected transmissions for the 1980 model year, except the FMX which was discontinued. These changes are so precise that they indicate an awareness of the causes of the problem, and they correct both of the design errors which we have found. The 1980 Ford transmissions perform comparably to transmissions manufactured by Ford's competitors.

The number of reports of incidents involving failure of the park mechanism in 1970-1979 Ford vehicles to engage or hold, and which resulted or could have resulted in inadvertent vehicle movement, is far in excess of the number required to proceed under the law. Ford has challenged the agency's count of these reports. However, this argument is principally semantic as it is based on Ford's application of an overly restrictive definition of failure to reports from consumers, police officers and others recounting incidents where the park mechanism failed to engage or hold as intended. These reports have varied in detail and specificity. For example, under Ford's definition, a report that a vehicle had "jumped out of park into reverse" with the engine running and the operator outside the vehicle, would be discounted because the report failed to indicate that the vehicle moved backward.

While the agency does not accept Ford's definition of what should be counted as failures,*/ it did undertake a recount of the reports under the direction of agency counsel to determine whether the errors in counting or coding letters, cited by example in Ford's presentation, were widespread. This exercise showed that the prior count was essentially correct and that there are more than 23,000 reported incidents involving 1970-1979 Ford vehicles.

It is clear from the case file that the sudden, unexpected movement of a vehicle creates an unreasonable risk of accidents, deaths, and injuries. Incidents involving 1970-1979 Ford vehicles have already resulted in several thousand reported accidents, over 1500 reported injuries and nearly 100 reported deaths, far more than have ever previously been reported in a defect case. Since the conclusion of the public hearing on August 22, we have learned of 44 more accidents involving 21 instances of personal injuries and 3 deaths. The danger is partially attributable to the unexpectedness of the incident as many owners have complained that their transmissions function normally on most occasions but fail to engage or hold park on infrequent occasions without warning.

LEGAL DEFINITION OF DEFECT

The National Traffic and Motor Vehicle Safety Act requires manufacturers of motor vehicles to conduct notification and remedy campaigns to recall vehicles containing safety-related defects whenever a manufacturer itself determines the existence of a defect and whenever the agency orders a recall after a final defect determination. The agency's orders are not self-enforcing, however, and must be upheld in de novo civil enforcement actions brought by the Attorney General in Federal Court. */ In such an enforcement action, the government must separately prove that the vehicles in question are defective and that the defect is related to motor vehicle safety in order to prevail. The Safety Act defines "defect" to include:

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*/ Ford has made much of a definition set out in the Investigative Report which appeared to restrict failures to those where the transmission is described as inadvertently shifting from park to reverse and resulting in rearward movement. The context of the report and subsequent correspondence with Ford have made clear the agency's position that all reports are considered relevant which describe failures of transmissions to engage or hold park.

> "any defect in performance, construction, components, or materials in motor vehicles or motor vehicle equipment."

15 U.S.C. 1391(11). The Act defines "motor vehicle safety" to mean:

> "the performance of motor vehicles or motor vehicle equipment in such a manner that the public is protected against unreasonable risk of accidents occurring as a result of the design, construction or performance of motor vehicles and is also protected against unreasonable risk of death or injury to persons in the event accidents do occur, and includes nonoperational safety of such vehicles."

15 U.S.C. 1391(1).

In this case the agency can prove the defect alternatively by showing a defect in performance based on the significant number of reported failures, or by showing that the transmissions contain a defect in design. The standard for proving a defect in performance based on a significant number of failures was established by the District of Columbia Circuit in United States v. General Motors (Wheels) 518 F. 2d 420 (1975).

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*/ We anticipate that it will be necessary to commence a legal action under the Safety Act to enforce the recall order. Ford has already stated its unwillingness to comply with such an order in pleadings filed in an action which it has commenced against the Department and NHTSA in the U.S. District Court in Delaware (Ford v. DOT, Civil Action No. 80-409). In that action Ford alleges that it expects the agency to determine that the transmissions are defective and to order a recall and that it will contest any such order in litigation following the order. Ford asks the court to authorize it to commence discovery in anticipation of that litigation. The government has moved to dismiss Ford's action, pointing out that Ford will have a full opportunity for discovery in any enforcement action the government brings. It is apparent, and Ford has conceded in its papers, that one of its purposes for the Delaware action is to attempt to secure a more favorable forum for hearing the enforcement action.

There the court held that a significant number was a "non *de minimus* number" which "normally will not be a substantial percentage of the total number of components produced." (513 F2d 438 n.84). Relevant considerations include the expected peformance of the components and the performance of comparable components. Applying this standard to the more than 23,000 reported Ford transmission failures and the several indicators that this failure rate exceeds that of comparable components, I am confident that a defect in performance can be demonstrated. The design defects of the Ford transmissions are described more fully below.

Because of the unreasonable risk of accidents causing injury which attend any failure of an automatic transmission to engage or hold in park, we do not expect Ford to contest the relationship of the defect to motor vehicle safety.

REMEDY

Under the Safety Act the manufacturer is responsible for devising a remedy for the defect. Ford documents reveal that Ford has examined a number of remedies, including the 1980 design changes which are described more fully below. However Ford has refused to endorse any of these remedies or to estimate the cost of a remedy short of replacement of all transmissions in question at prohibitive expense. We believe that this drastic remedy is not necessary and that the deficiency in the FMX, C-3 and C-4 transmissions may possibly be corrected by installation of spring devices outside the transmission housing and certainly by installation of the 1980 parts (this is mechanically feasible). A remedy for the C-6 and JATCO transmissions, which appear to be defective in their tendency to induce drivers to misposition the gear selector levers, may be as simple as the installation of a warning device. Assuming that the C-6 and JATCO remedy can be resolved by negotiated settlement, we estimate that the entire cost of the remedy may not exceed $125-130 million.

DESIGN DEFECTS

Every automatic transmission and gear selection system is comprised of: a gear shift lever at the steering column, a notched plate in the steering column ("steering column insert plate") to hold the gear shift lever in positions corresponding to "P", "R", "N", "D" or "L" on the gear indicator (known in the industry simply as the "PRNDL"), a switch which will only allow a vehicle to start in park or neutral ("ignition interlock switch"), a series of rods and grommets or a cable arrangement (the "linkage") to transmit movement of the gearshift lever to components (the "rooster comb" or "inner manual lever") inside the transmission housing mounted behind the engine (the "transmission"), which control the actuation of the various hydraulic (neutral, low, drive, or reverse) operations of the transmission and of the parts inside the transmission which actually lock the output shaft and hence, the rear wheels. A sketch of these parts and their functional relationship is attached.

Ford has attempted to portray incidents of park system failure as primarily the consequence of driver error. First, Ford defines park as the proper engagement of the gearshift lever in the appropriate slot in the steering column insert plate ("engaging the latch"), regardless of the positioning of the park indicator, ignition interlock switch or indeed, even the position of the internal transmission components. Ford disregards the effect of other park system components and persists in this single component definition of "park", despite its September 18, 1980 letter, stating "[n]o automobile manufacturer or duly competent automotive engineer would say the vehicle was in park simply because one of several components is in the proper position for park engagement".

Failure to engage the selector lever in the column insert plate should not be considered driver error or owner abuse. While the driver is unaware of the column insert plate (the "latch"), he can feel the transmission components reach the park position; see that the gearshift indicator is in the "P" position; and feel and hear an increase in engine rpm's as the transmission shifts out of reverse; and he can start the vehicle only when it is in park or neutral and remove the ignition key only when it is in park in later year models affected. These common signals of park engagement occur whether or not the gear selector lever has engaged the park slot in the column insert plate. Moreover, since Ford was receiving reports of "park to reverse" incidents as early as 1971, it should have foreseen this problem prior to the model years to be covered by the recall order.

It is not surprising that Ford characterizes the problem as the failure of the driver to engage the hidden latch, because Ford FMX, C-3, and C-4 transmissions depend solely on the column insert plate and transmission linkage to hold the internal transmission components in the park position. This is the essence of the design error we have found in the FMX, C-3 and C-4. These transmissions do not have sufficient spring forces acting on the controls inside the transmission to resist a tendency to shift from park to reverse which is common to all manufacturers' vehicles unless restrained.

This tendency is present because the park apply spring, which forces the park pawl into the park gear and locks the rear wheels, pushes the control mechanism inside the transmission toward reverse. Ford's FMX, C-3 and C-4 transmissions may shift out of park unless restrained by the column insert plate and the linkage.*/ In Ford's C-6 and JATCO transmissions, and all other transmissions we have seen, sufficient spring forces are provided within the transmission to restrain and counter the park apply spring, in effect holding the controls inside the transmission in the park position without the assistance of the linkage and the column insert plate. Therefore, the C-6, the JATCO and other non-Ford manufactured transmissions do not depend upon the driver having moved the gearshift lever to the point at which it engages the column insert plate (engaging the "latch") to hold the transmission in park. Their internal spring forces do not tend to shift the transmission into reverse in the first place.

The record demonstrates that the linkage and column insert plate systems in all vehicles are sensitive to wear, misalignment and slight mispositioning of the gear shift lever by the operator. Those Ford vehicles equipped with transmissions without sufficient spring forces to overcome the transmission's tendency to shift into reverse because of the park apply rod spring are inherently less reliable than vehicles which hold the park components in the transmission in the park position by means of both the linkage and column insert plate system and a spring force holding system inside the transmission.

The timing of the mechanical operations needed to engage park, i.e., when in relation to the compression of the park apply spring the hydraulic valve controlling (reverse) power to the rear wheels opens and closes, is another factor which may contribute to the likelihood that a transmission will shift into reverse. During the course of the recent public proceeding, Ford provided some apparently important new information. Ford's chart 53a and its supporting documentation show that when shifting the C-6 and FMX transmissions from reverse to park, the compression of the park apply spring begins before the hydraulic reverse valve has completely closed. Thus, if these transmissions bind at the beginning of this compression (when they are most likely to bind) the hydraulic valve powering reverse may still be slightly open (reverse bleed) or so close to the point where it will begin to open that small vibrations can move the detent plate and cause the valve to open.

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*/ For 1980 C-3 and C-4 Transmissions Ford altered the shape of the inner manual lever and reduced the force generated by the park apply spring so that these transmissions are now comparable with the rest of industry's. The FMX was discontinued after the 1979 model year.

In addition, the internal park mechanism in certain Ford transmissions, and particularly in the C-6 transmission, appears to bind as the gearshift lever is moved from reverse to park, thus interfering with full engagement of the park mechanism within the transmission and causing a failure to engage the column insert plate, or "latch", thus creating the possibility of inadvertent vehicle movement. This phenomenon is illustrated by a second higher force peak in measurements of shifting forces between reverse and park. */

ANALYSIS OF FORD'S DEFENSES

Ford has presented a multi-pronged defense to the agency's initial determination which emphasizes alleged unfairness in NHTSA's analysis and data presentation, and attempts to demonstrate that Ford's automatic transmissions are no different in design or performance than its competitors'. Essentially, Ford argues:

1) "impossibility", i.e., that Ford transmissions in proper working condition cannot and do not jump out of park into reverse;

2) "unfair publicity", i.e., that the media coverage has singled out Ford transmissions and that as a result NHTSA's data distort the comparative performance of of Ford and other transmissions;

3) that all vehicles with automatic transmissions can shift into reverse unexpectedly when the driver fails to put the gearshift lever "in the latch";

4) that Ford automatic transmissions do not cause Ford drivers to misposition their gear selectors more often; and

5) "sins of omission," i.e., that data in NHTSA's possession which affirmatively show that there is no safety-related defect were left out of the Investigative Report.

1. Ford's assertion of "impossibility" is not supported by any empirical data or engineering analysis, and the requirement of "proper working condition" is not defined. This assertion implies that the steering column insert plate and a linkage system of several feet of tubes and rods connected by plastic

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*/ For 1980, the C-6 transmission was modified to reduce overall shift efforts and to have the peak force occur after the detent spring roller has passed over the hump separating the park position from reverse postion.

grommets, under all conditions of normal wear, adjustment and use, will never allow the internal transmission [illegible] to move a distance on the order of 0.1 to 0.2 inch.

Eyewitness reports presented at the public proceeding and contained in the investigative file described incidents in which vehicles failed to hold park, but the gear selectors remained in the park slot, and no gross damage or misadjustment was discovered in subsequent inspection of the vehicles.

It is likely that many of the reported incidents involved rearward movements when the gear selector system did not engage the "latch," but, of course, the driver would not be aware of whether or not this hidden latch was engaged. In any event, Ford's impossibility argument is erroneous and an exaggerated oversimplification of the mechanical events that occur when a transmission is shifted into park.

2. Ford's "unfair publicity" argument includes claims that there has been a large amount of publicity surrounding this case, that this publicity generated the large number of complaints received by the agency concerning Ford vehicles and that the agency has unfairly been responsible for this publicity. First, while there has been publicity concerning this matter, it is not the result of any unfair or extensive actions on the agency's part. Prior to the Initial Determination, NHTSA issued only two routine consumer advisories, both of the type which the agency regularly issues in connection with its defect investigations. Ford itself conducted a media campaign to determine the scope of the problem, with radio, television, and print advertising in five major metropolitan areas for one month, and received a large number of reports of failures.

The first of the agency's consumer advisories was issued in November 1977 and the other in August 1978, almost two years prior to the initial determination. It is my experience that news stories quickly die out if there is no substance behind the initial report. Moreover, consumer advisories of this type in most other cases have resulted in a few hundred complaints at most. Several have resulted in almost no consumer complaints at all. Whatever media interest persisted in this matter, at least prior to the initial determination, appears to be attributable to the nature of the defect event - there are a substantial number of newspaper accounts of serious injuries and fatalities resulting from Ford "park-to-reverse" incidents. For example, one incident in the Milwaukee area received considerable media attention. This coverage was not the result of a NHTSA or Ford press release, but the consequence of the drowning of a young child when a parked Ford vehicle with an FMX transmission jumped out of park and rolled into a pond.

The agency has attempted to assess the impact of publicity on the reported failure rates for Fords and their competition. One means of examining the impact of publicity is to compare the rate of reported failures, accidents, etc. for those Ford transmissions (FMX and C-6) which were within the scope of the investigation, and hence the subject of some publicity, at all times during the investigation, with the rate of reported failures for those Ford transmissions (C-3, C-4 and JATCO) which were not announced to be under investigation until the initial determination. Even if there is some spillover because the public does not know what type of transmission is in a vehicle, one would expect that those transmissions which have received substantial media attention would have a higher rate of reported failures than those which were not the subject of such publicity. They do not. Ford C-3, C-4 and JATCO automatic transmissions, which are found primarily or exclusively in small and intermediate Fords, have failure rates equal to or greater than the FMX and C-6 transmissions discussed by the media.

If Ford's argument is that owners of Fords with C-4 transmissions who experience a failure of the park system to engage or hold and who hear that C-6 transmissions have a problem will report their problem, why would the owner of a GM vehicle, having heard about Ford's alleged problem, not report similar experiences to the agency? We learned in the Firestone case that publicity concerning that matter prompted a wave of complaints about Uniroyal tires which had similar problems on a smaller scale.

The agency does not rely on such conjecture or even on a single piece of data for its belief that Ford transmissions have greater failure rates than those in other vehicles. Rather, this belief is based on a number of data sources with varying levels of objectivity and statistical significance.

Source	Ratio of Ford to GM	Ratio of Ford to Chrysler
Consumer reports	50:1	66:1
NHTSA 107 Fleet Questionnaire	4:1	6:1
NHTSA Hotline */	5:1	7:1

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*/ NHTSA's Hotline operators queried owners of domestically-manufactured vehicles about incidents of automatic transmission slippage when they called to report all kinds of vehicle problems.

The consumer reports to Ford and NHTSA are most likely to have been affected by publicity, while NHTSA's 107-fleet and Hotline inquiries were unpublicized agency efforts to determine whether owners of all makes of vehicles had experienced unreported transmission problems.

Moreover, Ford internal memoranda written in 1971 indicate that park to reverse incidents were occurring "frequently in the field with actual high accident incidence." These reports, received six years prior to the opening of the investigation, could not have been influenced by agency publicity.

3. In attacking the agency's theory that the spring forces in Ford FMX, C-3, and C-4 transmissions fail to hold those transmissions in park, Ford has relied heavily on its definition of park as "gearshift lever in the latch". Ford then presents a study which purports to show what will happen if a gear shift lever left midway between park and reverse is subjected to severe disturbances. The agency agrees that if a gearshift lever is placed between park and reverse in any vehicle and sufficiently disturbed it may move, and that if a gearshift lever is left sufficiently close to reverse and subjected to such disturbances it may move to reverse. However, we disagree with Ford's conclusion that its study demonstrates that all manufacturers' vehicles are equally prone to mispositioning and equally sensitive to disturbance. NHTSA's test data indicates that certain Ford transmissions, particularly the C-6, are more prone to such mispositioning because they tend to bind midway between park and reverse.

In addition, the Ford test method of prolonged banging on the steering column creates an unrealistic disturbance and is too severe to discriminate between vehicles. In essence, Ford has subjected all of the tested vehicles to disturbances which are orders of magnitudes greater than those experienced in normal use, and then, when all vehicles failed the "test", claimed that all are equal. In the Ford Pinto defect case, the problem was that, when hit from behind at speeds as low as 15 mph, the Pinto would catch fire. Ford argued that its design was essentially similar to other vehicles'. To demonstrate this point it could have impacted a variety of vehicles at some speed where they would all catch fire, say 80 mph, and then claimed that there was no difference. In the Pinto case, Ford simply recalled the Pinto's and did not resort to this device, but Ford has used precisely this device here.

Finally, Ford used unrepresentative FMX transmissions, with a mean force holding the transmission in park of 11 inch-pounds, for its demonstration, whereas NHTSA and GM measurements show that the force holding FMX transmissions in park is often negative, and routinely less than 4 inch-pounds. Thus, Ford's demonstration has no bearing on the validity of NHTSA's "spring force" theory, which maintains that transmissions with low or negative force holding the transmission in park are less safe than transmissions which have high internal spring forces tending to hold the transmission in park without the additional need to have the gearshift lever latched, the linkage in close adjustment, and no wear in the grommets.

4. Ford contends that the agency's view that the C-6 and JATCO transmissions bind before getting fully into park, thus creating a false impression for the driver of a completed shift, is derived from improper measurements taken on disassembled transmissions over an unrealistic shift period lasting seven seconds. (NHTSA used a machine to measure the amount of force required to shift from park to reverse. These measurements show a second, higher force peak midway between park and reverse - a reflection of a binding which interferes with full engagement of the park mechanism.) Ford states that there is no evidence in the record that drivers can perceive and react to the two peaks, and argues that force measurements taken at the shift lever -- the position where the driver actually feels the force -- show no difference in shift characteristics between Ford and competitive transmissions. Finally, Ford points out that vehicles which bind midway between park and reverse cannot jump out of park, since they never get into park at all.

NHTSA notes that the "false park" or binding properties of the C-6 transmissions have been observed and articulated by four separate individuals, working independently,*/ as well as by the agency. NHTSA and its contractors have tested the C-6 transmission under a variety of conditions, with linkage connected as well as disconnected, and have taken measurements at the gearshift lever, which Ford suggests as the appropriate point. These measurements, which are shown in the chart at page 53 of the Investigative Report, were taken at the rate of two seconds from drive to park. Additional measurements taken by various NHTSA contractors show that almost twice as much force is required to shift the Ford C-6 transmission into Park as to shift GM and Chrysler transmissions. The contractors' testing also showed that binding in the C-6 transmission occurs when the internal transmission controls are in a position of unstable equilibrium between park and reverse, where a shift into reverse is most likely to occur.

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*/ These individuals were Dr. James Somerset, a professor of engineering at Syracuse University; Dr. William Divine, a professor of engineering at the U.S. Naval Academy; Dr. C. E. Abraham, an employee of Inter-City Testing and Consulting Company; and Mr. Simon Tamny, a registered professional engineer.

Ford's argument about jumping "from" park is merely semantic. Although both sides have from time to time described the defect as jumping from park to reverse, a better description is failure to engage or hold park. Certain Ford transmissions, especially the C-6 transmission, can bind and fail to engage park, while the FMX, C-3 and C-4 can fail to hold park even after the transmission components have reached the proper position for park engagement.

5. Ford contends that NHTSA has selectively chosen data to support both of its design defect theories and ignored conflicting evidence which demonstrates the absence of any defect. There are two elements to this claim: 1) that the data show that there is nothing wrong with Fords; and 2) that NHTSA test data shows that competitive transmissions are not materially different from Ford transmissions.

Although the Investigative Report does not purport to reproduce all of the data contained in the investigative file, there is no merit to the claim that NHTSA has suppressed conflicting data. All of the data in NHTSA's possession were supplied to Ford at the time of the Initial Determination. Data which Ford claims were improperly omitted either do not show what Ford claims that they show, or are of limited significance.

Ford points to NHTSA tests in which contractors were unable to cause "latched" vehicles to shift into reverse as "proof" of its position that it is impossible to do this. But inability to achieve a result in a few limited trials does not constitute impossibility ever to achieve it. The agency recognizes that an inadvertent shift from park to reverse is a rare event in comparison with a driver's total number of shifts to park, just as a blowout of a Firestone 500 tire was a rare event in comparison with the number of tire revolutions prior to failure. Moreover, even if it were impossible on repeated trials to cause a particular "latched" vehicle to shift into reverse, this would not mean that there is no defect, given the variability between vehicles. The agency need not establish the actual presence of a defect in all vehicles in order to carry its burden of proof; indeed, the Wheels decision states, at footnote 84, "that [t]he number of failures need not and normally will not be a substantial percentage of the number of components produced."

Contrary to Ford's claim that the full body of the agency's test data disproves the spring force theory by showing a substantial overlap in the torque measurements of vehicles of different manufacture, the data as a whole support the agency's view that only Fords have negative restraining torques and rely on the linkage to keep the transmission in park. While the agency's measurements reveal a good deal of variability between vehicles, attributable to differences in manufacture, wear, and use, only one non-Ford vehicle was ever observed to have a self-shifting characteristic. (The negative torque on this GM vehicle with a THM 350 transmission was so abnormal that the transmission was inspected and found to be damaged; when a standard GM detent spring was installed in the transmission, a normal, positive reading was obtained.) In contrast, a majority of FMX and C-4 transmissions measured had low or negative torque when measured both with the engine on and the engine off, as did a smaller percentage of the C-3s. */

Ford also argues that the agency improperly ignored measurements of the forces necessary to shift a transmission from park to reverse, which were made on vehicles with the linkage connected, and which supposedly show that the force required to shift from park to reverse is higher on Fords than on GM vehicles. Tests of the comparative strength of the linkage are insignificant because, unlike Ford, GM does not rely on linkage friction for park stability; rather, GM can count on internal spring forces which hold the transmission in park at the manual lever. Only the Fords have a small steady force trying to push the manual lever into reverse; thus, when the linkage friction in a Ford is momentarily overcome by a disturbance, the manual lever will move slowly toward reverse. Furthermore, measurements of the force necessary to move the entire linkage system are not particularly relevant to the Ford self-shifting problem, since a small movement of the manual lever, sufficient to engage reverse, can occur even without movement of the entire linkage system.

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*/ With the engine off, eight of eleven FMX transmissions, 12 of 15 C-4 transmissions, and two of 10 C-3 transmissions had restraining torques of less than five inch-pounds. (Two of the three C-4 transmissions with restraining torque greater than five inch-pounds had the 1980 changes); with the engine on, three of five FMX transmissions, nine of 11 C-4 transmissions, and two of eight C-3 transmissions had less than five inch-pounds of restraining torque. (The two C-4 transmissions with greater restraining torque had the 1980 changes.) For each of these models, at least one tested vehicle had negative restraining torque.

In an attempt to discredit NHTSA's "double peak" theory (i.e., that certain Ford transmissions bind midway between park and reverse, as demonstrated by a second, higher peak in a chart of the force required to shift to park), Ford has submitted several charts which purport to be measurements taken by NHTSA of force levels which show second, higher force peaks in non-Ford vehicles. However, these data are not measurements of the force required to shift a particular transmission, but in fact are measurements which show the amount of force used by drivers in performing a shift. These measurements do not tell you what the machine is doing, they tell you what the person is doing. Some part of his actions are, of course, made in response to his perception of what is needed at any given point, but these actions are clouded by distractions that a driver might experience, his shifting habits, strength, age and so forth. There is also a time lag between a sensation felt by a driver and any responding increase or decrease in force applied to the shift lever. The testing shows among other things that there is a large amount of variability in force input between drivers operating the same vehicle. When rapid shift speeds are used, the variability caused by differences in driver input and inertia in the system completely obscures differences in transmissions. The test data concerning GM vehicles claimed by Ford to show higher, second force peaks were taken using rapid shifts. These data show not only double, but indeed triple and quadruple force peaks from Reverse to Park. Moreover, these traces show double force peaks between Drive to Neutral and Neutral to Reverse.

At slow shift speeds the force curves do tend to follow after a fashion the shape of the detent plate (part of the internal transmission controls, which is held in place by the springs discussed earlier), as do the more accurate tests described in the ODI report which employ a constant force on the shift lever and therefore determine what force is necessary to shift the transmission into reverse. All higher second force peaks disappear in these tests - except for the Fords.

SUMMARY

A final determination and recall order is necessary with respect to the FMX, C-3 and C-4 transmissions because the evidence indicates that they are defective and that they may require mechanical alteration in order to remedy the defect. There appears to be little reason to expect Ford to enter negotiations concerning such a remedy, and therefore the commencement of enforcement efforts is warranted. This step may not be necessary to obtain a remedy for the apparent defect in C-6 and JATCO transmissions which may be correctible by the addition of warning devices to reduce their tendency to cause drivers to misposition the gear selector levers. Because such a remedy may be more acceptable to Ford, it appears worthwhile to explore a possible resolution by negotiation.

Tom Allison and Emma Jordan have been briefed by NHTSA staff on this subject and have been provided drafts of this memorandum.

I am also providing you a more detailed NHTSA staff analysis of Ford's defenses.

Attachment

APPROVED____________________

DISAPPROVED____________________

DATE____________________

The CHAIRMAN. One other question on this. The effect of a finding that there is a defect would be what, the cars would be recalled and fixed?

Ms. CLAYBROOK. That is right, that is correct, unless Ford disagrees and they could litigate the case and the court could decide. But the reason that the courts decided not to reopen the case is that the courts felt that they could not. They did not have the technological capability to overrule the judgment of the Department of Transportation.

It was not that they found there was not a defect. It was the traditional separation of responsibility between the courts and the executive branch.

The CHAIRMAN. Does this defect exist on all Ford cars or just some Ford cars?

Ms. CLAYBROOK. It exists on all Ford cars manufactured I think from about 1966 or 1967 through 1980. In 1980 Ford changed the design. The very parts that I mentioned were changed in their design, and the number of instances of the problem occurring in cars after they changed the design are de minimis.

The CHAIRMAN. Thank you.

Please proceed.

Ms. CLAYBROOK. I come here today, Mr. Chairman, to urge the Congress to enact legislation now under consideration for mandating installation of airbag restraint systems, and I have listed at least 10 reasons why. I am sure there are many more.

First, is that the Congress, the Department of Transportation and the Supreme Court at various times have endorsed this technology, and yet nevertheless, the auto industry has not even offered it for sale to consumers as optional equipment, except for Mercedes Benz and BMW.

The Secretary of Transportation in issuing the rule explicitly stated that airbags—the most effective system is an airbag system plus a lap and shoulder belt. In addition, the data on which she based this analysis did not really take fully into account crashes over 35 miles an hour—that is, the higher speed crashes—nor the likelihood of head and facial injury with belts as opposed to none, almost none with airbags.

Second, the depth of the auto industry resistance to improving the design of their vehicles can be seen in several recent statements they have made in other forums. First, the Motor Vehicle Manufacturers Association has formed a group called Traffic Safety Now to lobby for the mandatory seatbelt use laws, and in order to do this, they are raising $20 million a year from among their members to hire people, lobbyists, publish advertisements and give grants to other groups.

Apparently, this money is more expendable to rescind safety standards than it is to comply with them. In 1980, General Motors asked us to rescind the standard because they could save $20 million. In addition to putting this money into avoiding compliance with the standard, they continue to mislead the public and the courts about airbags. For example, in a recent suit against General Motors for failure to install airbags that is being brought by a brain-damaged plaintiff who was wearing her safety belt, the auto company told the U.S. Court of Appeals in the Eleventh Circuit:

> From the long history of efforts to develop passive restraints and the Federal Government's extensive and exhaustive review of the subject, one conclusion emerges: the use of a three-point belt system is the best protection possible against injuries in highway accidents.

This was just about a month ago.

Third, the likelihood that the manufacturers, particularly General Motors, will offer airbags for sale I think is very small unless there is a requirement.

Attached to my testimony is a chronology of industry promises developed by the Insurance Institute for Highway Safety which shows that since 1970 there have been excuses and delays and a lot of hot air, but no airbag technology installed. GM's latest ploy of a friendly interior I believe is a fraud. They have been working to install padding and energy-absorbing features, which they should have done two decades ago, in order to comply with the standards without any belt or bag system. But even if they manage to do this, they will not provide equivalent protection to restraint systems, and particularly not in higher speed crashes. And I believe that Congress should not permit this.

Fourth, the industry can easily afford to install airbags. In 1984 the "Big Three" U.S. companies earned profits of $9.81 billion. In 1981 the auto industry pleaded for removal of safety and emission standards to help Detroit in their time of need. Even though the relevant statutes do not permit this, the administration accommodated them. It is fitting in this time of enormous record profits for these companies to improve the safety of their cars for the many people who are injured in them.

Fifth, consumers have paid an additional $15.7 billion for new cars since 1981, according to the International Trade Commission, because of a voluntary import quota negotiated by the administration with the Japanese to limit their importation to 1.8 million units.

In the absence of competition in the lower priced cars, the U.S. companies raised their prices above what the market would have supported. Thus, the Government regulation of the market has supplied huge profits to the industry but not airbags.

Sixth, the current attitude of the companies toward safety is perhaps best exemplified by their participation in the Uniroyal One Lap of America auto race. This race begins at Cobo Hall in Detroit on March 1 and ends 8,000 miles and 8 days later at the same spot, after traveling to Seattle, Los Angeles, Jacksonville, and back to Detroit. The drivers will attempt to average 85 miles an hour in this race on the U.S. highway system. It is being sponsored in part by companies manufacturing fuzz busters, the radar detection equipment that warns drivers they approach police radar.

The U.S. auto companies, rather than using their expertise to design improved safety in their cars, are providing technical assistance to the drivers who will violate our speed limits and endanger other highway users.

Seventh, the DOT, despite its own finding that airbags plus belts are superior to belts alone, has issued the standard which we have already discussed, that indeed suggests that belts are superior.

In the brief responding to petitioners in the State Farm lawsuit on this standard, DOT complained that the insurance companies "did not cite any evidence that Congress wanted to prevent the Secretary from promoting safety if the act can reasonably be used, as it has been here, to provide an incentive to the States to pass belt laws that engender immediate cost-free benefits that simply are not achievable through a passive restraint standard."

In other words, the safety act's major purpose is to issue a standard that can be revoked to give an incentive to manufacturers to do something else.

Eighth, the refusal of the DOT to answer petitions from State Farm as well as numerous requests from State legislators and other interested organizations is causing confusion about whether particular enacted laws or pending bills comply or effectively avoid the DOT criteria for belt laws. These criteria in the Dole decision are designed to determine whether a belt use law is sufficient to be counted toward rescinding standard 208. The DOT's refusal to respond is creating the presumption that the Secretary intends to count even laws that don't comply in assembling the necessary two-thirds of the population to rescind the standard. This would ignore the explicit decisions of States such as New Jersey and Illinois to enact belt use laws that do not comply because they don't want to rescind standard 208. In issuing the "trap door" rule, the DOT now states in its Court of Appeals brief that "if sufficient MUL's [mandatory use laws] are enacted, the Secretary concluded that a Federal passive restraint requirement in addition would not be appropriate." Clearly a number of State legislatures disagree, and they have drafted their bills to avoid the Hobson's choice created by the DOT. In order to frustrate this opposition to the DOT's decision, the agency refuses to release any opinions on the subject.

Ninth, the DOT has asked the Congress for $20 million for fiscal year 1985 and $20 million in fiscal year 1986 to fund "an educational program aimed at increasing occupant restraint usage and the enactment of State safety belt use laws." Although Secretary Dole originally stated these funds would be used for both belts and air bags, Deputy Secretary James Burnley contradicted this statement in various communications to the Congress last summer. Secretary Dole once again clarified her position in September, but the plan presented to the appropriations committees in December reveals that the major emphasis for these funds will be to promote and enact belt use laws. There is little likelihood that the public will see or learn anything about air bags. In view of the failure of the existing $10 million dollar belt promotion activity to produce any tangible results, expenditure of this large sum for this purpose is highly questionable.

It is important to note that $20 million dollars per year constitutes one-fifth of the NHTSA's budget, a significant portion of a grossly underfunded and understaffed agency's allocation of resources. By comparison with this promotional program largessee, the entire research program for vehicle safety is now about $11 million, approximately 35 percent below the 1981 requested level in real dollars. In addition, the cost of this research today is higher and it is more complex. The funding levels for the critical biomechanical work are so severely reduced that the agency now has only two contractors who continue to bid on its projects. The reverberations are significant. For example, because of meager funding levels, students are no longer being attracted to this area of work thus cutting off needed expertise for the future as well. An air bag law would reinvigorate the attention and funding this life saving activity deserves.

Tenth, at least three airbag suppliers have dropped out of the business because of future uncertainty. Several others are still hanging on, but current prospects are not bright for any significant increase in business. In addition, a number of auto manufacturers have kept their air bag programs on the back burner, not wanting to be surprised and unprepared but refusing to offer the systems for sale without a Government requirement. This is expensive, time consuming, and a waste of valuable capability and resources. Clearly, all parties would benefit if the Congress would make the decision to require air bags in all cars. Lives would be saved and injuries reduced, the price to the consumer would be minimal ($50 to $150 per car), insurance rates would decrease, suppliers would be able to invest in further innovations without fear of being cut off in midstream, manufacturers would not have to worry about whether to put automatic belts or air bags in their vehicles, and engineers inside the companies would once again be challenged, without fear of ostracism, to make cars safe for the public to buy.

Mr. Chairman, time does not permit a full recitation of other issues concerning the NHTSA's current failure to carry out its statutory mission, such as the suspension of the tire quality grading system or the granting of numerous industry petitions to weaken existing safety standards. For that reason I would like with you permission to submit supplementary materials for the record. We should all be concerned about the lack of activity in the agency toward development of standards, completing safety defect investigations, and pressures from the Deputy Secretary to downgrade top level, talented employees who have made major contributions to the agency over the years. I urge you to continue these hearings on a regular basis so that the NHTSA is challenged to pay more attention to the primary reason for its existence—the saving of lives needlessly lost on the highway.

Thank you.

[The following information was subseqnently received for the record:]

QUESTIONS OF THE CHAIRMAN AND THE ANSWERS THERETO

Question. In your view, is there any reason why the Department of Transportation should not immediately determine, upon enactment, whether or not a state mandatory seat belt use law meets DOT criteria?

Answer. No. In fact, the Secretary of Transportation in her July 11, 1984 decision requiring automatic restraints said: "Under this aspect of the regulation, the Department will review each state NUL as it is passed to determine whether it meets the minimum criteria established by the regulation.

Question. If mandatory seat belt use laws are enacted by enough states to void DOT's passive restraint requirement, do you think passive restraints will ever become available to American consumers on a large-scale basis?

Answer. I think airbags will become available. But there would be another long delay. The airbag technology is so superior that it is hard for even its inventors in Detroit to quash it. Airbags are now being offered in the American market by luxury car manufacturers in small numbers. This means that eventually other manufacturers will begin to offer them for sale. However, the major U.S. manufacturers have designated the air bag as a line for resistence to federal safety standards, and if the federal safety standard is rescinded, they will immediately dismantle all of their air bag technology development and pre-production activity. Not until at least one of the larger manufacturers begins to offer air bags for sale will the U.S. manufacturers be forced to compete. Thus, there will be a significant additional delay of 5 or more years before air bags are available in the market in any significant numbers.

Question. Would you support legislation requiring installation of airbags in cars by model year 1990, using DOT's phased-in schedule provided in the occupant crash protection rule?

Answer. Yes, because approximately 9,000 lives would be saved and almost 100,000 serious injuries would be mitigated each year; the price to the consumer would be minimal ($50 to $150 per year); insurance rates would decrease by $40 to $60 per year; air bag suppliers would be able to invest in further airbag innovations without the fear of being cut off in mid-stream or making a useless investment (which is exactly what they have experienced since 1970); motor vehicle manufacturers would not have to worry about whether to install automatic belts or air bags in their vehicles and would gain protection against product liability litigation; and the engineers inside the auto companies would once again be challenged without fear of ostracism to make cars safe for the public to buy.

Question. In your view, would reinstatement of NHTSA's tamper-resistant odometer standard be an effective means of combatting odometer fraud? Are there any specific actions you believe would be particularly effective in dealing with odometer tampering?

Answer. Yes, reinstatement of the NHTSA tamper-resistant odometer standard would be an effective means of combatting odometer fraud because the standard requires notification of the car owner if the odometer is tampered with. This is achieved by inactivation of the system, color coding or other marking devices. The most effective actions to prevent odometer tampering would be to: redesign odometers to make them tamper resistant and to reveal it tampering occurs; color coding of replacement odometers to prevent secret substitution; improved state motor vehicle title laws in every state to require odometer mileage disclosure with every transaction to prevent "washing" of titles in states with weak or ineffective title laws;

and distribution of information with each car sold (new or used) on how to detect odometer fraud and how to pursue the available legal remedies.

Question. Given the continuing fatalities and injuries being reported as a result of the Ford transmission park-to-reverse problem, and based on your knowledge of this situation, do you believe NHTSA possesses sufficient information to reopen its investigation of the Ford transmission problem?

Answer. I believe NHTSA does possess sufficient information to not only reopen the investigation of the Ford transmission problem, but to make an initial determination of a safety defect. There is enormous record of technical information from the earlier (1978–80) investigation and now there is even more data from the hundreds of product liability suits filed, litigated and settled across the country. the NHTSA has never documented as many deaths and injuries from any safety defect as they have in the Ford transmission case. Also, because of the statute of limitations, it is urgent that the initial determination be made immediately.

The CHAIRMAN. Mr. Kelley.

Mr. KELLEY. The National Coalition to Reduce Car Crash Injuries asked that I address the issue today of automobile crash restraint educational programs, and specifically those being carried out or planned by the Department of Transportation.

Let me take as my text these statements from Secretary Dole's July 11, 1984, decision mandating passive restraints in future new cars, and I quote: "Some people have serious fears or concerns about airbags. If airbags were required in all cars, these fears, albeit unfounded, could lead to a backlash affecting the acceptability of airbags. These consumer perceptions must be recognized as real concerns." [1]

Still quoting: "Public education and the performance of automatic restraints will be the key factors in determining the long run public acceptance of automatic restraints." [2]

Thus did the Secretary highlight the need for a program, presumably an intensive and aggressive program, to inform the public of the lifesaving, injury-reducing facts about passive restraint technology and airbag technology in particular.

The Department, with the vigorous and well-funded support of insurers and automakers, for years has been directing such an informational effort at the public about the benefits of safety belts. But to date, whether from lack of motivation or lack of funds, it has failed to initiate a commensurate effort to combat the so-called unfounded but serious fears or concerns of the public about airbag technology.

Meanwhile, the public continues to be subjected to massive misinformation about passive restraints. For example, just 4 months after Secretary Dole's decision, the chief executive officer of Chrysler Corp., Lee Iacocca, published an autobiography in which he made these statements.

> There are "big problems" with airbags: "they are effective only if they are used with a seatbelt." They work "only in head-on collisions." They are of "no help at all" in multiple-impact crashes, or "second hits." They can "go off inadvertently, and when this happens, they can lead to injury or even death. A bag blowing up at the wrong time can throw back the driver and lead to an accident." [3]

Mr. Iacocca's book has been on the best-seller list for months. That's a big, attentive audience for such basic, fear-fostering information about the passive restraint technology whose public fears and concerns, albeit unfounded, again to quote DOT, the agency has taken note of.

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[1] Pages 188–189.

[2] Page 129.

[3] "Iacocca: An Autobiography" pages 300–330.

The facts, of course, well-documented in DOT's own records, are that airbags substantially improve protection both for belted and unbelted occupants; that they complement, not replace, seatbelts; that both airbags and belts have vital roles to play in reducing crash injuries. Even if airbags did work only in head-on collisions, that is to their great credit. They would provide protection for the head, face and spinal column across a range of speeds, including those too high for belts to provide adequate protection. And since frontal impacts account for more than half of all occupant deaths, the contribution of airbags to reducing fatalities clearly will be extraordinary.

The CHAIRMAN. Mr. Kelley, I am sorry. Could you just withhold for a minute? I have to get a phone call.

[Recess.]

The CHAIRMAN. I am sorry, Mr. Kelley.

Mr. KELLEY. Thank you. I will continue.

Straightening out the facts as they were misstated in Mr. Iacocca's book, of course, airbags substantially improve protection, both for belted and unbelted occupants. Even if they did work only in head-on collisions, that is to their great credit because they provide protection for the head, face and spinal column across a range of speeds, including those too high for belts to provide adequate protection.

As to second hits or multiple impacts, GM test work, films of which this committee has in its record, shows the effectiveness of airbags in multiple impacts, an effectiveness which has been well demonstrated in real-world crashes of airbag-equipped cars sold by GM in the mid 1970's.

The likelihood of an inadvertent air bag deployment is so small, much smaller, for instance, than that of a safety belt failure in a crash, that this is virtually a nonproblem. As carmakers have thoroughly established in exhaustive tests with volunteers, a bag, to use Mr. Iacocca's words, blowing up at the wrong time not only does not throw the driver back and lead to an accident, it does not even disturb the driver's operation of the car.

For DOT to leave such statements as these in the Iacocca book unrefuted is to ignore the damage they can do to creating a public constituency for passive restraints and a public understanding of this technology.

DOT, of course, and this committee and most of us in this room today know the facts about passive restraint technology and its benefits, but unlike the book I have been quoting, this testimony and the record of this hearing will not be purchased and eagerly read by millions of Americans. The "strong negative reaction"—and I quote DOT again—by the public to passive restraints, which was first identified by Secretary Coleman in his 1976 decision, continues to be insufficiently corrected.

A program at least as well funded, sincere and aggressive as DOT's belt promotion program is required to do the job effectively—a program that clearly bears the Federal Government's imprimatur and is funded at levels no less and arguably greater than levels of DOT's expenditures for belt use educational activities.

Since airbag technology is, according to DOT, the most misunderstood of the passive restraint approaches, it clearly deserves the most attention in such a program; that is, the most action to educate and demonstrate the twin needs of belts and airbags stated by the Secretary.

In closing, again let me quote Secretary Dole, this time in her statement accompanying the July 11 decision. Her decision's objective, she said was twofold: first, to protect the most people now by encouraging State mandation of use of existing belts; and second, to provide leadership for the future, encouraging the technology that could provide even greater safety in the years ahead, by which she meant, of course, airbag-type technology.

Like belts and airbags, these two goals are mutally desirable and complementary, not contradictory. Initiating a strong positive passive restraint education effort now is one way in which DOT can demonstrate that it wants both goals to be attained. If it continues to fail to do that, it will have only itself to blame for any continued lack of public support or understanding for airbags.

Thank you.

[The following information was subsequently received for the record:]

QUESTIONS OF THE CHAIRMAN AND THE ANSWERS THERETO

Question. As your testimony states, airbags clearly are a proven safety technology. Would the Coalition favor legislation to require installation of airbags in cars, independent of any state efforts to enact mandatory seat belt use laws?

Answer. The Coalition favors any means to bring about the earliest, most widespread installation of airbags possible, whether or not it is independent of state efforts to mandate safety belt use. Thus, it would support such legislation as you described.

Question. You mention in your testimony DOT's ongoing seat belt education program. What type of a program do you believe is needed for disseminating information about airbags?

Answer. To be effective, a DOT program to disseminate information about airbags must make the fullest possible use of the wealth of available material—film, airbag crash occupant testimony, data, technological findings, test and real-world impact results, etc.—to explain and demonstrate airbag technology to the public in positive terms.

The Secretary and the NHTSA Administrator must be active, affirmative, visible participants in the program. Among other aims the substance must be directed at identifying and correcting the numerous myths, misstatements and unfounded biases that have been generated about airbag technology and its performances. (See my testimony for some examples.) The program must stress and explain the separate, complementary roles of airbags and belts, and emphasize the compounded reductions in death and injury that will occur when airbags are standard equipment and belt use has increased substantially. It should honestly inform non-belt wearers—of which there will be millions even if belt use laws pass in numerous states—that they are better off with an airbag than with no protection at all, and why. It should describe the kinds of injuries, whether fatal or disabling and disfiguring, that airbags protect against. And it should emphasize the overall favorable economics involved on widespread, early introduction of airbag technology as standard equipment in all cars.

There is no present dearth of film, print and supporting material on which to base such a program; the Coalition and its members are ready to assist the Committee and DOT in identifying it on request.

The **CHAIRMAN**. Thank you, sir.

Ms. McCarter.

Ms. **MCCARTER**. Mr. Chairman, I appreciate the opportunity to speak to you today and to represent the American Public Health Association. We are a society of public health professionals which include all disciplines in public health—physicians, nurses, social workers, epidemiologists, dentists, veterinarians, engineers, sanitarians, and other health professionals.

We wish to commend you for your leadership in the area of automobile safety and to assure you that we will continue our support for your efforts as you try to reduce death and injury from highway accidents.

Our interest in automobile safety goes back a long way, and I want to take a moment to reflect on that. In 1955 the association adopted a resolution which called for the development of motor vehicle accident prevention programs. In 1958 we urged the use of seatbelts by the general public, and in 1977, noting that substantial numbers of death and injuries could be prevented if cars were equipped with airbags, we endorsed the regulation to require that all cars provide passive automatic protection for front seat occupants. Since that time we have been actively pursuing those goals through court actions, through support of legislation, public education programs, and involvement in court actions.

I go through that history because it is important to realize that our members are very discouraged that here in 1985 we are no closer to the goal of having airbags in cars than we were in 1977. Indeed, in the 16 years since 1968 when airbags were first perfected, 400,000 front seat occupants of passenger cars have been killed in the United States. In addition, some 4 million women and children were injured so severely that they required hospitalization. Half of those deaths and injuries could have been avoided by airbags.

As public health professionals, we know that the most effective controls for prevention of death and injury are those which provide automatic or passive protection. In other words, it is not as useful to require individuals to take independent action. We do not ask people to boil their water every morning. Instead, we provide community water treatment. We do not ask people to boil their milk. We pasteurize it so that safety is provided.

I would like to quote Sue Baker, who is a professor at the John Hopkins School of Hygiene and Public Health in a commentary she wrote for our newspaper, "The Nation's Health:"

> Where would we be in the control of polio, smallpox, and diptheria if their control depended upon getting people to do something like fastening their seatbelts some 50,000 times in a lifetime. And yet the hope of doing just that has been used as an excuse for not designing cars with better automatic protection.

Mr. Chairman, with your leadership and support we can move forward and apply the knowledge and technology that we already have to the protection of motor vehicle occupants. The potential for saving lives and preventing injuries through the use of airbags is enormous. We must meet that challenge.

Thank you.

[The following information was subsequently received for the record:]

QUESTIONS OF THE CHAIRMAN AND THE ANSWERS THERETO

Question. You have clearly expressed your support for airbags. Would you favor legislation to require installation of airbags in new cars manufactured for sale in the U.S.?

Answer. Yes. In 1977, the American Public Health Association noted that substantial numbers of deaths and injuries could be prevented if cars were equiped with airbags. The Federal Government has failed to act effectively on this issue and the American people still are not assured of this protection. APHA would actively support such life saving legislation.

Question. In your view, what actions does Congress need to take to improve highway safety?

Answer. In addition to adopting legislation to mandate airbags in new cars, other highway safety issues should be considered. These are:

Ensure that the 55 mph speed limit remains in effect.

Drunk driving legislation should be enforced and improved where necessary.

Vehicle protection standards should require improved side impact protection and no damage 5 mph bumpers.

Protection standards covering passenger cars should be extended to include multipurpose vehicles and pick-up trucks.

Improved safety should be sought for school buses and trucks.

The CHAIRMAN. Thank you very much.

Mr. Ditlow.

Mr. DITLOW. Thank you, Senator Danforth.

In summarizing my statement I will turn immediately to recalls.

The Ford transmission case is but one example of a fallback in recalls under the Transportation Secretaries Lewis and Dole. We have seen that the average number of recalls is a hundred less per year than in each of the years of the previous decade. We heard this morning from Administrator Steed that there is no problem if Ford owners shut off their cars, or if people shut off their cars.

Turning just to the State of Missouri where we have 10 fatalities associated with Ford park to reverse defect, five of those fatalities occurred where the engine was shut off. Five of those fatalities occurred after the warning labels were sent to the owners. We know of more than 80 fatalities that have occurred since the agreement was reached with Ford Motor Co. in December 1980. That is more fatalities than with any other defect or recall in the history of the National Highway Traffic Safety Administration.

I would like to know how the Justice Department would respond to the defense in the prosecution of a mass murderer where the mass murderer says well, I killed less people this year than I did last year.

Tragically, the majority of the victims, as Ms. Claybrook pointed out earlier, are the young or the old. In Missouri, 9 out of 10 victims were either children or older Americans. Another victim, in addition to the 2-year-old boy that I cited in the prepared statement, was a 67-year old woman who once again shut off her 1978 Ford Thunderbird. As she stepped out of the car, it rolled back, the door hit her, knocked her under the wheels, and she was killed.

There is no more tragic example of an agency avoiding a problem than we have with the Ford transmissions.

Turning to bumpers, we are faced with an economic problem, not primarily a life-and-safety problem. There is a small safety benefit from bumpers, the 5 mile versus 2.5 miles per hour, but it is not the life and death type situation in most instances.

When NHTSA rolled back the 5-mile an hour bumper standards for the 1983 models, many of the car companies went immediately to the 2.5-mile-per-hour bumpers. To expose this problem, the center published bumper ratings for 1983 to 1984 models showing which cars had 5-mile-per-hour bumpers. Given an informed choice, the consumers would pick the 5-mile-an-hour bumpers over the 2.5-mile-an-hour bumpers.

But in 1985 there is a new consumer deception brewing in 5-mile-per-hour bumpers. What is a 5-mile-per-hour bumper to one manufacturer or one model to another is not a 5-mile per hour bumper to another one. Simply put, one 5-mile-per-hour bumper protects both the bumper and the car, while the other protects only the car while the bumper itself destructs at the cost of hundreds of dollars to the consumer.

We see a situation where some manufacturers such as General Motors are claiming all of their Oldsmobile models have 5-mile-per-hour bumpers, when in reality the 5-mile per hour bumper is for the body only at best. I do not think there is a better example of exposing this than what Consumer Reports does. They have a 5-mile per hour bumper basher that bashes the bumpers of new cars. They put that bumper basher into retirement from 1979 through 1982 because there was no damage to any cars. But as stated in my prepared testimony, they are now seeing damage up to almost a thousand dollars using the bumper basher where there was no damage in previous years.

The only thing that can be done and should be done is to return to the 5-mile-per-hour standard across the board and look to going to 7.5 or 10 miles an hour in the future.

In the occupant protection area, the best action taken by DOT in the last 4 years was the reinstatement, albeit hesitant, of the passive restraint standard. But what we are seeing now is the playoff between passive restraints and mandatory seatbelt laws that threatens to give us neither one.

The mandatory seatbelt laws, as you so clearly articulated earlier, may be mandatory seatbelt laws in name only, exactly the type as Puerto Rico enacted in the early 1970's, which did not lead to any increase in seatbelt usage in the Commonwealth of Puerto Rico. Yet those very same name-only mandatory seatbelt laws may be used to defeat passive restraints and mandatory airbags or automatic belts under the Dole decision.

If these weak laws are to be counted as part of the two-thirds majority needed to revoke the passive restraint standard, then we are going to end up with no protection for the American public.

We think that this is indeed a disgrace, that the Department of Transportation has not given counsel to the States who are passing these laws, to the insurance companies, and to the consumers who are challenging the seatbelt law in the courts, holding back to the 11th hour whether or not they will decide to count one of these weak seatbelt use laws in the two-thirds majority.

The best policy is simply to go ahead and mandate passive restraints on the original schedule proposed by Secretary Dole, and to permit the States to enact and enforce seatbelt use laws as they so choose.

Thank you.

[The following information was subsequently received for the record:]

QUESTIONS OF THE CHAIRMAN AND THE ANSWERS THERETO

Question. In your testimony, you advocate mandating passive restraints on Secretary Dole's schedule and permitting the states to enact seat belt laws if they so choose. Would you favor federal legislation to require *airbags*, based on Secretary Dole's timetable?

Answer. The Center for Auto Safety favors air bags over automatic seat belts as they provide greater protection in high speed crashes. Air bags could protect in frontal barrier crashes up to 50 MPH while 35 MPH is near the upper limit for seat belts, either automatic or passive. Moreover, the Center favors legislation which would phase in mandatory air bags on the timetable set out by Secretary Dole for mandating passive restraints under Standard 208.

Question. In your view, how significant is the difference in protection afforded by a Phase II bumper as opposed to a Phase I bumper?

Answer. The difference between a Phase I and a Phase II bumper is major in that a car with a Phase I bumper can suffer several hundreds of dollars of damage in 5 MPH barrier and 3 MPH corner impacts while the same car with Phase II bumpers would sustain no damage whatsoever. To require only Phase I protection in 5 MPH crashes would be to defeat the purpose of no-damage bumpers. Consumers want full 5 MPH crash protection as it is the only way of eliminating the time consuming and costly aftermath of having to get estimates, repairs and all the bureaucratic hassle of a minor collision. Replacing a damaged Phase I bumper in a 5 MPH crash is as troublesome as replacing a 2½ MPH bumper in a 5 MPH crash. What is needed is no damage as offered by Phase II bumpers.

Question. Given the requirements under which NHTSA must operate when it orders a recall, do you believe that NHTSA has ever had sufficient information to order a recall of the Ford cars with faulty transmissions?

Answer. The NHTSA had enough information to order a recall of the Fords with faulty transmissions on October 3, 1980, when former Administrator Joan Claybrook recommended a recall to then Transportation Secretary Neil Goldschmidt. In view of the utter failure of the warning labels to stop the death toll on Fords with these transmissions and the success of the modified post-1980 Fords in stopping Park-to-Reverse deaths, the NHTSA not only has the evidence necessary to order a recall but the information to specify an adequate mechanical fix.

Question. In your view, are sufficient data available for NHTSA to upgrade side impact protection for motor vehicles?

Answer. Sufficient data are available for NHTSA to upgrade the side impact standard for cars. The agency could immediately change the force levels in the present standard so that small cars have to meet the same standard as large cars. Injury criteria could be developed for a dynamic test standard to be issued within a year and implemented across the board in new models two years thereafter.

The CHAIRMAN. Thank you very much. I am really going to ask just one question, and I would like your advice on it. What is the difference to the American public in life and safety, health, between these two possibilities? One, mandatory airbags. Two, the second alternative, covering two-thirds of the population with mandatory seatbelt statutes which provide, among other things, that a person cannot be stopped solely to determine whether he is complying with the seatbelt law; the person would not be required to wear the seatbelt if there are medical reasons to permit it, leaving it up to the individual to determine whether or not there are medical reasons, including fear of seatbelts; and a penalty for violation of the seatbelt requirement, if it is imposed at all, of $10; and an exemption of mail carriers from the seatbelt requirement. That is another provision being considered in the Missouri bill.

What is your judgment as to the relative effectiveness of airbags on the one hand or two-thirds of the population being covered by this kind of provision on the other hand? In your judgment, how much compliance would there be in a State which had this kind of a bill?

Ms. CLAYBROOK. Well, in the first instance, Mr. Chairman, one of the complaints that the auto manufacturers raise is that, of course, you would not have airbags as quickly as you would the mandatory seatbelt use laws. In other words, the laws could be enacted, say, in the next year, but it would take 10 years to have airbags in all cars.

But what they fail to consider is that in the first year, if they put them across the board, they would be in 10 percent of the cars; in the second year they would be in 20 percent of the cars; the third year they would be in 30 percent of the cars, and so on.

If you have the kind of provisions that you are talking about for two-thirds of the population, I guess on a nationwide average you would probably have about 30 percent usage of airbags—I mean, excuse me, belts, sorry, because you would have already one-third not covered at all by belt laws, and therefore at the average of 12 to 15 percent usage, and you would have probably about 50 percent usage with the other laws.

The other problem in terms of effectiveness is that the people who are least likely to wear belts are the ones most likely to be involved in crashes. The Department of Transportation has document this. You have between 12 and 15 percent nationwide usage of belts, but you have in crashes only about a 2- to 3-percent usage of belts.

So that even if you got up to 30- to 50-percent usage of belts across the Nation, you still would not be catching many of the people who are involved in crashes.

The CHAIRMAN. Do you think this kind of statute would produce 50 percent usage of belts?

Ms. CLAYBROOK. No; I do not think so, because I think the public is very cynical about enforcement of the law, and I think that when people know that the chances of being caught or arrested or fined are de minimis, then they often behave that way, particularly where there is resentment about the statute itself. So it certainly seems to me that that is another factor.

The CHAIRMAN. Do you not think that this kind of statute, if this is enacted, is just as though the State legislature winked at the public when it enacted the bill?

Ms. CLAYBROOK. I think so. And what is most disturbing is that the manufacturers really do not care. What they want to do is overrule the standard.

Mr. KELLEY. I think, Senator, it is important to keep in mind also that whatever observed use levels we are talking about flowing from any safety belt use law, whether they be 30, 40, 50, or 60 percent, the impact of that has to be tempered with the knowledge, well documented in other places, that those who may need to be wearing the belts the most, those who may tend to get into car crashes the most, the young, those who drink and drive, and drink abusively and drive, and others will be the least likely probably to be wearing those belts and complying with the law.

On balance, nice people probably will tend to follow the law at the 30 or 40 or 50 percent daytime level. The impact on the death, injury, and economic loss coming out of car crashes will not be commensurate even with that 30, 40, or 50 percent use level. The impact of an automatic system that is there to work only when you need it and always works when you need it, of course, will be far greater.

Ms. CLAYBROOK. Just one last point that I would make, and that is that the manufacturers also suggest that people will be misled into thinking they do not have to wear any belt at all when they have an airbag, because of the promotion that an airbag is an automatic system.

But what evidence we have, it is not enormous, but what evidence we have shows that people are much more willing to wear their lap belt than the lap-shoulder belt, and I think that with a good promotion program to wear your lap belt, I think a lot of people would do that.

Mr. DITLOW. Even under the analysis done by the Department of Transportation, if you had good seatbelt laws in the two-thirds of the States, you would still save about 2,000 less lives per year than what you would with the airbag-lab belt combination. That is DOT's own analysis. In other words, it would be around 7,000 versus 9,000 lives a year.

I personally think that with paper laws of the type you describe, that we would not see usage rates go above 30 percent, and I think that you would see——

The CHAIRMAN. Even within those jurisdictions that passed the law?

Mr. DITLOW. That is absolutely correct, Senator Danforth. I just do not believe that those laws are going to get the results that we need.

The CHAIRMAN. You know, it was pointed out by an earlier witness—I think it was by Senator Fumo—that if you pass a law which is done with a wink, it breeds contempt for the law itself. It breeds contempt for the law.

If you pass a law which you know is not going to be enforced, there is no intention of enforcing it, it breeds contempt for the law, and particularly with younger people.

I mean, just reading news stories in Missouri about the State legislature, it breeds contempt for the law to see this game being played.

Ms. McCarter.

Ms. MCCARTER. I guess I just want to add that we are a nation of more than two-thirds, and I feel compassion for the other third, which could end up in a situation without any protection. Airbags would protect all of us. I think that is important to remember.

The CHAIRMAN. Thank you all very much for being with us.

Next we have Dr. Fred Bowditch, vice president, technical affairs, Motor Vehicle Manufacturers Association. Dr. Bowditch, thank you.

STATEMENT OF DR. FRED BOWDITCH, VICE PRESIDENT, TECHNICAL AFFAIRS, MOTOR VEHICLE MANUFACTURERS ASSOCIATION

Dr. BOWDITCH. Thank you, Mr. Chairman.

In the interest of time, I ask that my first statement be entered into the record, and I will read excerpts.

The CHAIRMAN. It will be. Thank you.

Dr. BOWDITCH. Mr. Chairman, members of the committee, I am Dr. Fred W. Bowditch, vice president-technical affairs of the Motor

Vehicle Manufacturers Association of the United States, Inc. [MVMA]. MVMA represents U.S. automobile, truck, and bus manufacturers producing more than 98 percent of all domestic motor vehicles.

Vehicle safety has always been an integral part of the design, engineering, and manufacturing process in the domestic motor vehicle industry. In fact, when the Government first adopted Federal motor vehicle safety standards under the National Traffic and Motor Vehicle Safety Act, it based the majority of its initial standards on practices already used by manufacturers in the design of some production vehicles, such as seatbelts, improved door latch mechanisms, high-penetration-resistance windshields and independent front and rear brake systems. The domestic motor vehicle manufacturers continue to be committed to further improving the safety of their vehicles by incorporating promising approaches as they are developed—and, MVMA and its member companies continue to support thoroughly tested and practicable regulations that provide real benefits to consumers.

In the brief time allotted for my testimony today, I will restrict my remarks to those draft legislative proposals under consideration by the committee which are of particular concern to MVMA, the Motor Vehicle Manufacturers Association, and its members.

These proposals cover side impact protection, tamper-proof odometers, crashworthiness ratings, 5-mile-an-hour bumpers, and mandatory airbags.

Before turning to each of these specific concerns, however, I want to stress a point I will also make later with regard to the draft airbag proposal before the committee, namely, that we believe as a matter of principle that the regulatory process works best when Congress sets forth the broad parameters of the rules and the agencies then write the performance, not the design, regulations necessary to achieve these objectives.

The CHAIRMAN. Even with NHTSA?

Dr. BOWDITCH. Yes, sir.

With regard to side impact rulemaking requirements of the draft National Highway Traffic Safety Administration authorization bill, we believe that such a legislative mandate is unnecessary given the activity on this subject underway at NHTSA.

NHTSA has publicly stated that it has already completed testing and dummy development and indicated at the November 15, 1984, NHTSA-industry meeting that a side-impact proposed rulemaking would be issued in 1985.

We believe this legislation is also uncalled for in view of the legitimate concerns about the repeatability and relevance to real accidents and injuries of the compliance test procedures likely to be proposed.

The draft NHTSA authorization bill also would mandate reinstatement of the tamper-proof odometer requirement, Federal motor vehicle safety standard 127. MVMA and its member companies recognize that odometer fraud is a serious public policy concern, and we therefore support measures such as requiring an audit trail of odometer readings over the life of a vehicle which will help address this concern.

We believe, however, that new vehicle hardware requirements are not the answer to the problem. There is, unfortunately, no such thing as a completely tamper-proof odometer. Like other vehicle components, odometers must be capable of being removed and repaired in the field.

Any mechanical odometer can be removed from the vehicle, taken apart, reset, and reassembled or simply be replaced by an entire odometer assembly from a low-mileage wrecked vehicle.

Future generations of electronic or computerized odometers may deter some of the backyard mechanics, but prove to be susceptible to the illegal machinations of the clever high-tech criminal.

Uniform State provisions for odometer disclosure at each title transfer and vigorous enforcement of these provisions is the real answer.

The so-called crashworthiness data requirements of the NHTSA authorization bill pose similar real-world problems. No one has yet identified an objective means for comparative forecasting of actual occupant crash protection performance of different passenger cars, despite the repeated attempts to do so.

Mandating automobile crashworthiness ratings and labeling at this point would therefore produce information that would mislead the consumer, not help him. Variations in crash test results are still so great that any rating scheme considered by NHTSA today would mislead consumers to make erroneous safety judgments in purchasing a car.

In fact, a comparison between the real accident data experience for like vehicles in the field and the new car assessment program information published by NHTSA shows that in most cases the NHTSA data gives the consumer incorrect information on the relative safety of different vehicles.

We cannot see how a legislative mandate will solve these considerable problems.

Turning now to the draft bill which would reinstate a 5-mile-an-hour bumper standard for passenger cars, we believe that such a requirement is simply not needed. Market forces are already leading to more damage-resistant bumpers than those required as a minimum by the current standard.

Consumers are now better able to select the level of protection they desire, and to balance between damageability protection and initial cost than ever before.

We are especially concerned that the draft bill would render inoperative the language from the Motor Vehicle Information Cost Savings Act which requires NHTSA to set a standard that maximizes cost savings to consumers.

In the absence of any proven safety need, an approach to bumper protection which ignores cost savings appears to us to be entirely in contravention of the public interest. The draft bill would compound this problem by allowing the Secretary of Transportation to set a standard higher than 5 miles an hour, for instance.

The draft airbag bill raises similar consumer choice concerns. By overriding FMVSS 208 to eliminate for all practical purposes any front seat occupant protection system other than airbags as of September 1, 1989, this bill would preclude consumers from selecting vehicles with other known types of automatic restraint systems which are equally effective but less costly, such as automatic belts.

Even more importantly, however, it would inhibit design innovation by arbitrarily making it pointless for manufacturers to strive to develop entirely new occupant protection technology.

Freezing out the possibility of any occupant protection breakthroughs or refinements and improvements to present technology is fundamentally ill considered. We think the regulatory process works best when Congress sets forth the broad parameters of the rules, the objectives to be met, instead of specifying particular designs.

By legislatively mandating a specific piece of vehicle hardware, the draft airbag bill would have Congress set technical regulations rather than establish the broad regulatory goals and policies. We believe that the effect of the draft bill would also be to separate the airbag requirement from actions by the States to enact mandatory seatbelt safety use laws.

We believe that such a move will deemphasize the societal need for mandatory belt use laws, regardless of the kinds of automatic occupant crash protection offered in future generations of new cars.

State belt use laws are needed to guarantee the maximum rate of effectiveness of all automatic restraint systems. For instance, the U.S. Department of Transportation estimates that the effectiveness of an airbag system drops from 50 percent to 30 percent when the lap belt is not used. Thus the use of belts is important even with airbags.

Airbags are effective in frontal and near-frontal crashes, which account for only about half of all accidents. Without belt, airbags are not effective in side-impact and rollover accidents. And, with airbags, belts are very helpful in insuring the proper positioning of occupants to gain the maximum protection of bags. Thus, the use of belts is important even with airbags.

If automatic belts are installed in cars, mandatory belt use laws are also needed to assure that motorists do not remove or disconnect those belt systems. And if new technologies such as cushioned interiors are employed, safety belts will still have to be used, particularly to provide effective crash protection in rollovers and to prevent ejection from the vehicle.

Furthermore, more than 105 million cars on the road today are equipped with proven crash protection systems, that is, safety belts. Even as vehicles offering automatic crash protection become available, millions of those older vehicles will continue to be driven for at least 15 years to come. We believe that every effort must be made to require vehicle occupants to buckle up; if the threat of unwanted automatic protection systems is perceived by some as the incentive needed to get some States to enact mandatory belt-use laws, so be it. The more belt-use laws on the books, the greater the savings in lives and avoidance of serious injuries.

Mr. Chairman, this concludes my prepared remarks. I would be pleased to answer any questions you may have.

The CHAIRMAN. Well, I have you down in the "No" column, Dr. Bowditch. I think you have very clearly stated your position, and I appreciate it.

You have effectively stated the views of the Motor Vehicle Manufacturers Association, generally really in opposition to everything. I would hope that—and hope springs eternal, I guess—that the automobile manufacturers would have a somewhat more positive view of safety than they do.

They really are against everything, airbags, 5-mile-an-hour bumpers, the side impact protection rule, tamper-resistant odometers, crashworthiness test data, you name it.

I guess they are for buckle-up campaigns and things like that, but it does seem to me that Ms. McCarter, the executive director of the American Public Health Association, made a good point, that we do not deal with milk producers the same way we deal with automobile producers.

We do have requirements about how milk is produced and sold. The same with our water supply. Maybe the status quo is just fine, and everything is just hunky-dory, but I do not think so. And I think that ideally Congress would not get into this stuff. You are right. Ideally, Congress would not be putting itself in the position of a regulatory agency.

But when you have the history, as we do with the National Highway Traffic Safety Administration, over the last 4 years, of first going through a period of systematically dismantling what previously had been done in safety regulation, and then sort of moving from, I guess, the dynamic, enthusiastic, destructive stage to a more passive resistant stage of its existence.

It seems to me Congress then basically has two choices. One is just to wash our hands of safety, just say, in essence, well, it is NHTSA's business, and if they want to adopt the passive role, fine, or the other is to say that, you know, ideally we leave it up to the regulatory agencies, but when they are not functioning, or malfunctioning, as they were a few years ago, then Congress has to fill the vacuum. That is my view.

So, you have mentioned legislation. There is no bill that has been introduced. I mean, I am always thinking about safety legislation, and am now, but I have not introduced anything yet. I may in a few days, but I have not done it yet, but I would encourage you all to be maybe a little bit more forthcoming on something than you are. Maybe that is wishful thinking, but thank you very much for your testimony.

Mr. Bowditch. Thank you, Senator.

[The following information was subsequently received for the record:]

Questions of the Chairman and the Answers Thereto

Question. If states representing ⅔ of the U.S. population enact madatory belt use laws before April 1, 1989, the passive restraint requirement of Secretary Dole's occupant crash protection standard will no longer be in effect. In that case, do you believe the domestic auto manufacturers would offer any types of passive restraints as a supplement to the seat belts?

Answer. Yes. Even in advance of the 208 Final Rule, some manufacturers began offering passive restraints. To comply with FMVSS 208, all manufacturers will have offered by 1989 passive belts and/or air bags on some portion of their vehicle production. It is likely that some customers will continue to want these passive systems particularly in an environment of mandatory belt use laws, and that domestic manufacturers will try to meet this consumer demand by providing automatic restraints on some of their vehicles.

Question. Why is the auto industry so actively advocating mandatory belt use laws? Do you believe the auto industry will ever advocate or even support air bags?

Answer. (a) The industry has long supported mandatory safety belt use laws to achieve the earliest and greatest possible reduction in injuries and fatalities. Between now and 1989, about 100,000 people in the 115 million cars now on the road will die in automobile accidents. Up to half of them could be saved by belt use laws. Additionally, belt use laws are needed to encourage belt use in cars that are equipped with air bags and to discourage disconnection or defeat of passive belts.

(b) Air bag technology has been developed to its current level through industry initiatives and such systems have already been offered on a voluntary basis by some manufacturers. Significant private sector resources have already been committed to the development of air bags as a supplement to safety belts. Application of this technology as a supplement should expand with public acceptance and as the remaining open questions about air bag effectiveness, cost, replacement and disposal are resolved.

Question. Some auto manufacturers are offering 5 mph bumpers. Do you expect this to continue? Do you expect more manufacturers to offer Phase II 5 mph bumpers?

Answer. (a) Yes. Market considerations have led to a trend toward bumpers with 5 mph capability.

(b) Manufacturers strive to provide the best balance between the damage resistance capability of the bumper system and its other cost and functional parameters. The "Phase II" requirements have not been shown to be a good measure of overall damage resistance and, therefore, fail the cost effectiveness test. Accordingly, Phase II 5 mph bumpers should not be a design requirement per se.

Question. Automobile manufacturers are now allowed by NHTSA to install anti-lacerative windshields on cars. To what extent are these windshields being used by the U.S. auto industry? What has been the experience to date?

Answer. (a) To date, U.S. manufacturers have installed almost 20,000 anti-lacerative windshields. (The material supply has been limited). These installations are part of the development process foı this technology. Field experience with such windshields shows that:

These windshields successfully resist exposure to the elements.

These windshields are susceptible to scratching from cleaning and frost removal, as well as from decal removal.

There are no reported lacerations, but the exposure time is too short to provide sufficient field data upon which to base effectiveness conclusions.

The NHTSA's allowing but not requiring installation of these windshields is an example of prudent rulemaking. It allows manufacturers to phase-in a new and attractive technology and identify and resolve problems before requirements are frozen into mandatory form.

QUESTIONS OF THE MINORITY AND THE ANSWERS THERETO

Please comment on each of the following issues in detail, outlining your support or opposition and the reasons for your position.

Question. Reopening the Side Impact Standard Rulemaking.

Answer. NHTSA has publicly stated that a side impact proposed rulemaking would be issued in 1985. It is, therefore, unnecessary to pass a law mandating that rulemaking. MVMA is well along in a research program designed to develop side impact test procedures that related to ways vehicle occupants are injured in real accidents. NHTSA is separately studying many of the same issues that are being addressed in the MVMA progam. Setting a fixed time for completion of rulemaking would be imprudent in light of the complexity of developing a test that accurately and reliably reproduces the vehicle/occupant interaction.

Question. The Proposed Crashworthiness Rating Program.

Answer. MVMA supports the concept of providing consumers with trustworthy information on the crashworthiness of vehicles. However, despite repeated attempts to do so, on one—government, manufacturers or the insurance industry—has yet identified an objective means for accurately forecasting and comparing the actual occupant crash protection performance of different passenger cars despite many years of research. The variations in crash test results in supposedly identical tests are still so great that any rating scheme considered to date could lead consumers to make erroneous safety judgments in purchasing a car. When there is an acceptable basis for fairly and accurately comparing the occupant protection performance of different cars, DOT has said it will make this information available to consumers.

A December 1980 NHTSA public workshop in Lancaster, Pennsylvania addressed data sources, rating vs. ranking, data presentation format and dissemination techniques. As far as MVMA is aware, the agency has initiated no program to build on the recommedations of this workshop. Neither has it followed up on the recommendations of an earlier comprehensive study on automotive ratings conducted for the agency by General Electric Corporation.

Legislative action cannot overcome the basic technological problems in developing useful crashworthiness comparisons and is likely to result in the dissemination of misleading consumer information.

Question. Reinstatement of the Tamper Resistant Odometer Standard.

Answer. MVMA supports efforts to eliminate odometer fraud and believes enforcement of the odometer disclosure requirements of 49 CFR Part 580, along with uniform titling and registration procedures in all states, can be effective.

Former FMVSS 127 would have required vehicle odometers to meet certain performance standards when tested with specified tools. these standards were undesirable for at least two reasons: 1) The standards would be ineffectual because those wanting to roll back odometers soon would find other tools to defeat even those odometers meeting the standards. 2) The standards were effectively design-restrictive, inhibiting the creation of more tamper-resistant odmeters and/or requiring design provisions that moght compromise the reliability and durability of the odometer. Accordingly, FMVSS 127 should not be revived.

Like other vehicle components, odometers must be capable of being removed and repaired in the field and thus cannot be make completely change resistant.

Question. Requiring Front Seat Air Bags in All Cars by 1989.

Answer. MVMA opposes a statute that would mandate front seat air bags in all passenger cars. Such a requirement effectively would deny consumers the selection of vehicles with other types of passive restraint systems (such as passive belts) which are equally effective, but less costly. It also would effectively stifle manufacturers' incentives to develop new alternative occupant protection technology.

MVMA continues to believe that enactment of mandatory safety belt use laws is the best and most immediate way to reduce a tragic loss of lives, serious injuries and societal costs. Belt use laws will also help to establish among motorists the seat belt wearing habit that is necessary to guarantee maximum effectiveness of any passive restraint system. For example, DOT estimates that the effectiveness of air bags alone in th prevention of fatalities is 20–40 percent, compared to 40–50 percent when a lap belt is used with the air bag. Safety belts help protect in al types of accidents, while air bags help protect only in certain frontal or near frontal collisions. The proposed separation of the air bag requirement from actions by the states to enact belt use laws would serve to deemphasize the need for such laws.

Question. Reinstating Part I and Part II of the 5 mph Bumper Standard.

Answer. Market pressures have already led to bumpers that are more damage resistant than those required by DOT's present 2½ mph minimum standard. The difference between a 2½ mph bumper system and a 5 mph bumper sytem is essentially a matter of economics. Also consumers are now better able to balance expected operating and repair cost savings against the initial cost of the system. The previous 5 mph Phase II bumper standard forced manufacturers to concentrate most of their efforts on assuring that certain specific tests could be met and discouraged employment of technologically innovative bumper systems. This situation would return if the 5 mph requirements were restored. The greatest consumer benefit that has derived from bumper standards stems from the uniform bumper height requirements for passenger cars.

Question. Does MVMA support or oppose S–475?

Answer. MVMA supports S–475.

The CHAIRMAN. Next we have a panel, Mr. Jimmy Payton, National Automobile Dealers Association; Robert McElwaine, American International Automobile Dealers Association; Benjamin Jackson, Automobile Importers Compliance Association; and Lothar Schuettler, Excluservice, Inc.

I should give this panel an opportunity to testify on the voluntary restraint agreement extension, but I do not think I will.

Gentlemen, thank you very much. Mr. Payton, would you like to proceed?

STATEMENTS OF JIMMY C. PAYTON, CHAIRMAN, GOVERNMENT RELATIONS COMMITTEE, NATIONAL AUTOMOBILE DEALERS ASSOCIATION; MICHAEL J. JACKSON, PRESIDENT, EURO MOTORCARS; ROBERT McELWAINE, PRESIDENT, AMERICAN INTERNATIONAL AUTOMOBILE DEALERS ASSOCIATION; BENJAMIN R. JACKSON, EXECUTIVE DIRECTOR, AUTOMOBILE IMPORTERS COMPLIANCE ASSOCIATION; AND LOTHAR SCHUETTLER, PRESIDENT, EXCLUSERVICE, INC.

Mr. PAYTON. Yes, sir.

Mr. Chairman, my name is Jimmy Payton. I am chairman of the Governmental Relations Committee of the National Automobile Dealers Association. I am also a franchised new car dealer from Grapevine, TX.

On behalf of NADA's 19,000 franchised new car and truck dealers, I would like to express our support for the recently introduced odometer tampering proposal by Senator Exon, S. 475. It is designed to protect purchasers of used automobiles from fraudulent practices associated with odometer tampering.

Mr. Chairman, we have submitted our full statement on odometer tampering for inclusion in the record. We have described in our testimony, as we did during the last Congress, the magnitude of this huge consumer fraud, some of the mechanics of how it works, and the manner in which this bill seeks to address those problems.

Inasmuch as our time is so short, I will not restate these matters, but will instead comment briefly on the new provisions which have been added to the Exon bill. Several new provisions have been added to the bill which passed the Senate during the 98th Congress, S. 1407.

We believe that the bill has been strengthened by the inclusion of these provisions, and we strongly endorse them. First, a provision was added which requires auction companies to maintain a record of the odometer readings on vehicles sold through its auction facilities, as well as the names of the buyer and seller of the vehicles.

It is well documented that a large number of vehicles which have had their odometers rolled have at one time gone through auctions. This record should prove to be invaluable to enforcement agencies in determining the point at which the odometer was rolled and in identifying the person having possession of the vehicle at that time.

We would like to note that the auction company has no responsibility to verify the correctness of the odometer reading, and we believe properly so. It would be an impossible burden on the companies to be responsible for such a verification. The records alone will serve the purpose for which they were intended.

The bill also contains a new provision which allows States to apply to the Secretary of Transportation for approval of an alternative method of complying with the provisions of the act. The Secretary may grant such approval if it is determined that such other method of implementing the act is consistent with the purposes of the act.

Of course, many of the provisions of the act are effective because of the uniformity created among the States. However, there are certainly areas where new creative ideas can be employed without damaging the basic objectives of the legislation. Therefore, we endorse and support the inclusion of this new provision.

Finally, the bill includes new provisions which increase the maximum criminal and civil penalties for those found guilty of spinning odometers. Under existing law, violation of the odometer statute constitutes only a misdemeanor. The new criminal penalty section would make this crime a felony.

We support this increase in penalties. It seems to us that it is perfectly reasonable and appropriate to create a stronger deterrent against this growing fraud on the American public by providing greater penalties for those found guilty of engaging in this type of activity.

Mr. Chairman, in summary, we feel that this proposal would go a long way in solving the problems of odometer tampering and we urge positive and prompt committee action on the bill. I would be glad to answer, attempt to answer any questions which you might have on this matter.

At this time I would like to introduce Mr. Mike Jackson to address the problem of gray market imports.

[The statement follows:]

STATEMENT OF THE NATIONAL AUTOMOBILE DEALERS ASSOCIATION

Mr. Chairman and members of the committee, my name is Jimmy C. Payton and I am chairman of the Governmental Relations Commmittee of the National Automobile Dealers Association [NADA]. I am also a franchised new car dealer from Grapevine, Texas. On behalf of NADA's 19,000 franchised new car and truck dealers, I would like to express our appreciation for the opportunity to testify on the odometer proposal before you today, which is designed to protect purchasers of used automobiles from fraudulent practices associated with odometer tampering.

Simply put, odometer rollback is one of the most costly frauds being perpetrated on the American consumer today. It is costing many consumers hundreds of dollars per purchase. The National Highway Traffic Safety Administration [NHTSA] estimates the cost to consumers to be in excess of $2 billion dollars annually. This amounts to an average cost to consumers of approximately $750 dollars per car in cases where the odometer has been rolled back. Because of the difficulty in identifying odometers which have been rolled back and the number of cars which are affected, the total cost to consumers may be even greater.

It has been estimated that over 3 million used cars sold annually have had their odometers rolled back. The average rollback, per car, is 30,000 miles. On November 27, 1983, "60 Minutes" provided a segment on odometer fraud. In the segment Mike Wallace interviewed an unidentified men who demonstrated the process of rolling back an odometer. It requires no special skills or tools. In fact, a tool fashioned from a coat hanger is usually adequate to do this job. The man indicated that he will make at least $50 dollars for the rollback and that he can do 50 to 75 odometers per day. The rolled back odometer provides between $700 and $1200 dollars in profit to the seller. Inasmuch as odometer rollback is so very lucrative, and the risk of getting caught is so remote, it is not surprising that the practice is extremely widespread and growing each year.

As we have mentioned, in addition to being lucrative, the practice is extremely difficult to detect. Current law requires written disclosure of the odometer reading to be provided to the transferee at the time of transfer of ownership of a vehicle. Federal law does not, however, dictate the form in which disclosure must be made. It is our understanding that in many cases odometer disclosure is made on a separate piece of paper and handed to the buyer. In such cases the buyer can simply destory the disclosure paper, roll the odometer and prepare a new disclosure for the next buyer which indicates the odometer reading as rolled back.

As we understand the matter, one area in which rollback frequently occurs involves cars which have been sold through such mass sales techniques as auctions. Wholesalers typically buy large quantities of cars at auctions to sell to other wholesalers or to dealers. One car often goes through several auctions and owners before it is sold to a consumer. The cars often travel across State lines and somewhere along the way, the odometer is rolled back. Because of the circuitous route the car has taken, it is difficult, if not impossible, to determine the point at which the odometer was spun.

In cases where the wholesaler engages in this practice, the first thing he does after buying the car is to roll back the odometer.

The second step is to acquire supporting paperwork. As we have mentioned, in many cases the odometer disclosure is made on a separate sheet of paper accompanying the title which complies with current disclosure law. In such instances, the wholesaler merely alters the odometer reading or provides an entirely new disclosure. In cases where the title incorporates the odometer reading, a different technique becomes necessary to assure that the disclosure matches the rolled back odometer. The wholesaler can attempt to alter the existing title or launder it completely. A common laundering technique is to title the car in a state which does not require an odometer reading on the title. To accomplish this a person can merely send the information, together with a check to a business associate in another state, who will have the car retitled. The car never moves. the new title is returned without any reference to an odometer reading. The wholesaler is then free to disclose the odometer reading of his choice. The cars are then ready for sale. By the time the car reaches a used car dealer, the odometer has been spun, and the odometer disclosure will correspond to the reading on the rolled back odometer. The dealer sells the car to a consumer in good faith, but the consumer, in reality, ends up paying an excessive amount for the car because it has been driven many more miles than are indicated on the odometer.

The odometer proposal before you today serves several purposes in combating odometer rollback. First, the bill establishes uniformity among the states in odometer disclosure and in titling procedures. Second, the bill is designed to create a record which would allow a consumer to be better informed regarding the true mileage on a used vehicle. This record, in turn, would create a mechanism through which odometer tampering can be traced, and violators prosecuted. Third, the bill provides a stronger deterrent to odometer rollback by increasing both the criminal and civil penalties in cases where tampering is established in court proceedings. Finally, the bill includes a provision which allows flexibility to the states in the implementation of the act so as to avoid hardship and allow new creative ideas in combating this growing fraud.

In order to accomplish these pruposes, the bill requires that annual applications for registration must include an odometer reading. The state, in turn must take this odometer reading and print it on the new registration car. The bill then requires that following the sale of a vehicle from one person to another, the vehicle cannot be licensed or registered in a state unless the seller discloses the true odometer reading as of the date of sale on the title and the application for title by the new owner is accompanied by the prior owner's most recent registration card. The certificate of title issued by the state to the new owner must include on the face of the title the odometer reading as disclosed on the transferred title. In order to avoid forgery and alteration of the title, the title must be printed in the bank note intaglio printing process. The bank note intaglio printing process has built-in security features which make alterations of any type detectable. Other security features may work equally as well as bank note intaglio printing, but since many states already use this method of providing secure titles, it was thought that this would bring a desirable element of uniformity to the state automobile process.

In addition, several new provisions have been added to the bill which passed the Senate during the 98th Congress, S. 1407. We believe that the bill has been strengthened by the inclusion of these provisions and we strongly endorse them. First, a provision was added which requires auction companies to maintain a record of the odometer readings on vehicles sold through its auction facilities as well as the names of the buyer and seller of the vehicles. It is well documented that a large number of vehicles which have had their odometers rolled have at one time gone through auctions. This record should prove to be invaluable to enforcement agencies in determining the point at which the odometer was rolled and in identifying the person having possession of the vehicle at the time. We would like to note that the auction company has no responsibility to verify the correctness of the odometer reading, and, we believe, properly so. It would be an impossible burden on the companies to be responsible for such a verification. The records alone will serve the purpose for which they were intended.

The bill also contains a new provision which allows states to apply to the Secretary of Transportation for approval of an alternative method of complying with the provisions of the act. The Secretary may grant such approval if it is determined that such other method of implementing the act is consistent with the purposes of the act. Of course, many of the provisions of the act are effective because of the uniformity created among the states. However, there are certainly areas where new creative ideas can be employed without damaging the basic objectives of the legislation. Therefore, we endorse and support the inclusion of this new provision.

Finally, the bill includes new provisions which increase the maximum criminal and civil penalties for those found guilty of spinning odometers. Under existing law, a violation of the odometer statute constitutes only a misdemeanor. The new criminal penalties section would make this crime a felony. We support this increase in penalties. It seems to us that it is perfectly reasonable and appropriate to creat a stronger deterrent against this growing fraud on the American public by providing greater penalties for those found guilty of engaging in this type of activity.

Mr. Chairman, in summary we feel that this proposal will go a long way in solving the problems of odometer tampering. For that reason, we strongly support the bill and urge positive and prompt committee action on this bill.

GRAY MARKET IMPORTS

Mr. Chairman and members of the committee: My name is Michael J. Jackson and I am the president of Euro Motorcars which is an authorized Mercedes-Benz and Rolls-Royce dealer in Bethesda, Maryland. On behalf of the National Automobile Dealers Association and its 19,000 franchished new car and truck dealers, I would like to express out appreciation for the opportunity to testify on the Gray Market proposal before you today.

The vehicles generally referred to as "Gray Market" cars are those which are produced outside of the United States and do not conform to U.S. safety and environmental standards when they are imported into this country. According to statistics complied by the Environmental Protection Agency and the Customs Service, approximately 1,500 nonconforming vehicles were imported into the United States in 1980. Over the past four years, the hardly noticeable trickle of nonconforming imports has become a virtual tidal wave. Current estimates indicate that 40,000 nonconforming cars entered the country in 1984 and it is estimated that over 50,000 of these vehicles will enter in 1985.

The Gray Market was created when exceptions were written into the Motor Vehicle Safety Act and the Clean Air Act to permit individual importation of noncomplying vehicles by Americans who were overseas sufficient time to have purchased a vehicle there—principally servicemen and diplomats. Today, however, virtually all manufacturers offer a wide range of U.S. vehicles for tourist pickup and use overseas. Thus, the reason behind the gray market exception has disappeared, and instead it is used as a massive loophole through which organized importers bring into the U.S. thousands of nonconforming vehicles for resale.

In order for major manufacturers to imports vehicles for resale in the United States, such manufacturers must develop, manufacture and certify vehicles to conform with applicable federal emissions and safety standards. Certified automobiles must be convered by emission design, defect and five-year/50,000 mile performance warranties. Furthermore, such vehicles are subject to fuel economy requirements, gas guzzler taxes and the defect notification and recall provisions in both the Clean Air Act and Motor Vehicle Safety Act.

On the other hand, current EPA and Department of Transportation regulations do not impose such extensive requirements on conditional importers. Simply put, foreign manufacturers and their franchised dealers have made substantial investments to insure that vehicles sold in this country are properly designed, built, serviced and maintained during operation. Gray Market importers have none of these responsbilities.

Such differential treatment has placed manufacturers and dealers in an unfair competitive situation in which they must sell against their own products imported through the Gray Market, in many cases at a price disadvantage. In other cases, they must sell against products which were never designed and produced for resale in the United States.

In addition to being placed at a competitive disadvantage in the marketplace, franchised dealers have become increasingly concerned about assumption of liability when the attempt to service and repair such vehicles. Time and again, dealers have observed catalysts mounted without adequate ground clearance, the absence of catalist heat shields, catalysts mounted in dangerous proximity to fuel or brake lines, adjustments to compensate for compression ratios on engines designed for leaded fuel and bolted on, rather than welded, side-door reinforcements. We have even received a report that one vehicle has a gas-fired auxiliary heater.

A recently completed survey by the National Automobile Dealers Association indicates that Gray Market importation of motor vehicles has become a major end-run around Federal Emissions and Safety Standards.

In early October 1984, NADA sent a detailed survey to over 1,000 dealers representing certain import vehicles lines, including Mercedes-Benz, BMW, Porsche and Jaguar. Dealers were asked to complete a 14 item emissions and safety checklist and report on any service-related problems, for each Gray Market vehicle coming into their dealerships prior to December 1. NADA has, thus far, compiled results of approximately 400 1980 and later model year Gray Market vehicles. (See attachment.)

The results of this survey indicate that one-third of the gasoline powered cars do not have catalytic converters, and only 5 percent of the cars have all the items on our emissions checklist. With regard to compliance with satety items, the results are worse, even frightening. Only 4 cars or 1 percent of the Gray Market vehicles surveyed have all the safety items. As to U.S. headlights and bumpers, 60 percent and 82 percent of the cars, respectively, do not comply. Forty-three percent of the cars do not have side-door reinforcement, and 39 percent do not have U.S. version seatbelts. It should be noted that our survey only indicates whether the items are on the car, not whether the items are property installed and functioning. In all, only 3 cars have all the items on our emissions and safety checklist—a 0.8 percent compliance rate.

Most consumers who purchase Gray Market vehicles fail to understand the extent to which European models differ with their American counterparts, thereby possibly underestimating the potential safety defects caused by the modification to the vehicle. Furthermore, after purchasing the vehicle, consumers discover when they take their vehicle to the local franchised dealer for repairs they often cannot obtain proper service. Technical information, experienced service technicians and replacement parts for modified imports are simply not available at franchised dealerships. Lacking knowledge as to the particular components modified to comply with applicable Federal requirements, dealers are extremely concerned that replacement of parts with original parts or even minor adjustments may constitutie emissions tampering or violate safety standards. Furthermore, dealers are particularly concerned about product liability claims from repairs which affect vehicle driveability and safety. In the final analysis, many dealers have simply refused to service and repair Gray Market imports—out of fear for themselves and for their would-be customers.

When this situation occurs, the consumer becomes dissatisfied with the franchised dealer and the manufacturer, while the Gray Market importer—who may not even be equipped to provide customer service—experiences no consumer backlash.

Purchasers of a Gray Market Vehicle may also experience a "substantial Lessening" of the Vehicles's trade-in value. In the "NADA Official Used Car Guide" the following warning appears:

"An unknown number of "Gray Market" imported cars enter the marketplace each year. "Gray Market" is a term often used to describe imported cars which enter the U.S. via channels other than Factory authorized importers. It is possible many "Gray Market" cars do not fully meet federal standards. This condition might result in a substantial lessening of the car's market value."

The problems associated with the rise of the Gray Market have now reached epidemic proportions. We cannot, and do not, believe such problems were anticipated by Congress in the passage of previous Clean Air Act and Motor Vehicle Safety Act legislation. NADA supports the proposal presently before your committee which ends the practice of bringing nonconforming vehicles into the U.S. for resale. We hope that the committee will act expediently to end this practice.

NADA appreciates the opportunity to present our views on this subject before the committee and will be happy to answer any questions at this time.

NADA GRAY MARKET VEHICLE SURVEY

All Vehicle Makes (Mercedes-Benz/BMW/Porsche/Jaguar)

General results:
- Responses/vehicles: 408 total (378 gas/30 diesel).
- Responses to vehicle survey: 393 total (364 gas/29 diesel).
- Potential sales losses: 349—86 percent of total responses.

Detailed vehicle survey results:

Item	Emissions items	
	Number of vehicles with missing item reported	Percent surveys completed
Catalyst	119	[1] 33
Oxygen sensor	209	57
Carbon canister	149	41
Tank filler restrictor	146	40
Unleaded fuel labels	149	41
ERG (diesel)	20	[2] 69
Certification label	203	[3] 52
Number of vehicles:		
No emissions items	110	[4] 28
All emissions items	19	5
	Safety items [4]	
U.S. headlights	237	60
U.S. bumpers	322	82
VIN at windshield pillar	176	45
U.S. version seat belts	155	39
Nonflammable seats	125	32
Side-door reinforcement	168	43
Certification label	176	45
Number of vehicles:		
No safety items	56	14
All safety items	4	1

Compliance with all emissions and safety items: 3 vehicles—0.8 percent of surveys completed.

Service report results:

Problem	Number of times reported	Percent surveys completed [5]
Lack of information on modifications	239	65
Parts availability problem	245	66
Lack of specifications	240	65
Lack of technician training	219	59
Uncertainty over warranty coverage	248	67
Concern about emissions tampering	237	64
Concern about creating a safety problem	215	58
Concern about potential product liability	251	68

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[1] First 5 items on gas engines only; 364 surveys on gas vehicles.

[2] 29 surveys received on diesel vehicles.

[3] Labels on gas and diesel vehicles; 393 surveys received.

[4] Based on 393 surveys received.

[5] Based on 370 NADA surveys received; 23 Mercedes-Benz of North America surveys do not contain service report items.

NADA GRAY MARKET VEHICLE SURVEY

Mercedes-Benz Vehicles

General results:

Responses/vehicles: 282 total (252 gas/30 diesel).

Responses to vehicle survey: 278 total (249 gas/29 diesel).

Potential sales losses: 245—87 percent of total responses.

Detailed vehicle survey results:

Item	Emissions items	
	Number of vehicles with missing item reported	Percent surveys completed
Catalyst	81	[1] 33
Oxygen sensor	147	59
Carbon canister	102	41
Tank filler restrictor	98	39
Unleaded fuel labels	102	41
ERG (diesel)	20	[2] 69
Certification label	138	[3] 50
Number of vehicles:		
No emissions items	87	[4] 31
All emissions items	[5] 5	2
	Safety items [4]	
U.S. headlights	171	62
U.S. bumpers	249	90
VIN at windshield pillar	133	48
U.S. version seat belts	114	41
Nonflammable seats	93	34
Side-door reinforcement	131	47
Certification label	129	46
Number of vehicles:		
No safety items	41	15
All safety items	1	.4

Compliance with all emissions and safety items: 1 vehicles—0.4 percent of surveys completed.

Service report results:

Problem	Number of times reported	Percent surveys completed [6]
Lack of information on modifications	183	72
Parts availability problem	190	75
Lack of specifications	190	75
Lack of technician training	176	69
Uncertainty over warranty coverage	179	70
Concern about emissions tampering	182	71
Concern about creating a safety problem	168	66
Concern about potential product liability	187	73

[1] First 5 items on gas engines only; 249 surveys on gas vehicles.

[2] 29 surveys received on diesel vehicles.

[3] Labels on gas and diesel vehicles; 278 surveys received.

[4] Based on 278 surveys received.

[5] Of 45 potential vehicles, 40 vehicles did not have both underhood and underfloor catalysts; of the 5 remaining vehicles, 2 received reports of either improper installation or malfunctioning.

[6] Based on 255 NADA surveys received; 23 Mercedes-Benz of North America surveys do not contain service report items.

NADA GRAY MARKET VEHICLE SURVEY (MERCEDES OBSERVATIONS)

Report No.	Year-model	Observations
1	82-380 SEC	Broken seat belt arm; catalyst welded in system.
7	83-300D	Nonstandard exhaust.
8	84-190E	Stalling, ignition problems (452 mi.).
9	84-500 SEL	Makeshift catalyst at fuel tank only.

NADA GRAY MARKET VEHICLE SURVEY (MERCEDES OBSERVATIONS)—Continued

Report No.	Year-model	Observations
13	84-500 SL	Catalysts mounted about 1 inch from fuel lines; O_2 sensor system appears inoperable.
15	82-380 SL	No heatshields on catalyst; no belt on air pump.
10	83-500 SEL	Rough idle; no power—driveability problems.
26	500 SEL	Ford catalyst installed
36	82-380 SEL	Catalyst welded in—body contact; improper O_2 sensor wire routing.
69	84-500 SEC	Relocated fuel tank; ignition problems (438 mi.).
113	500 SLC	Air pump disconnected.
139	500 SL	Fuel pump relay damaged from wiring in federalization process.
140	500 SEL	GM catalyst installed.
169	280 SEL	Oxygen sensor installed but not connected.
177	82-380 SL	Improperly routed fuel lines.
178	82-500 SEL	Catalyst of unknown brand welded into the existing exhaust system.
181	84-380 SE	Poor installation of side-door reinforcement.
182	82-380 SE	Lambda system appeared inoperable.
185	84-500 SL	Noise under car; problem due to conversion.
186	84-500 SEL	Noise in emission system.
217	83-280 SL	Ford catalyst installed.
226	84-300D	Non-MB turbocharger retrofitted.
230	82-380 SEL	"Jerry-rigged" emissions wiring.
236	84-300D	EGR improperly installed; vacuum line disconnected.
254	81-500 SE	Lambda system inoperable.
255	83-500 SL	Oxygen sensor installed in exhaust manifold at No. 4 cylinder; frequency valve installed in wrong fuel lines; no vacuum advance; non-MB catalyst.
263	84-500 SEC	Emission system not operating properly.
269	83-500 SEC	Inadequate catalyst-to-ground clearance; vehicle had a gas-fired auxiliary heater—possible emissions and safety problems.
274	82-500 SEL	No belt on air pump.
284	84-300D	EGR pipe welded shut.
285	84-500 SL	Catalyst replaced at 12,080 mi.; side-doors reinforced after sale to the present owner.
290	84-gas	Driveability problems—hesitation and stumbling.

NADA GRAY MARKET VEHICLE SURVEY

BMW Vehicles

General results:
Responses/vehicles: 53 total.
Responses to vehicles survey: 52 total.
Potential sales losses: 46—87 percent of total responses.
Detailed vehicle survey results:

Item	Emissions Items	
	Number of vehicles with missing item reported	Percent Surveys completed
Catalyst	12	23
Oxygen sensor	22	42
Carbon canister	17	33
Tank filler restrictor	17	33
Unleaded fuel labels	17	33
EGR (diesel)	13	25
Certification label	NA	NA
	22	42
Number of vehicles		
No emissions items	9	17

Item	Emissions Items	
	Number of vehicles with missing item reported	Percent Surveys completed
All emissions items	10	19
	Safety items	
U.S. headlights	21	40
U.S. bumpers	34	65
VIN at windshield pillar	18	35
U.S. version seat belts	16	31
Nonflammable seats	20	39
Side-door reinforcement	14	27
Certification label	17	33
Number of vehicles:		
No safety items	6	12
All safety items	1	2

Compliance with all emissions and safety items: 1 vehicle—2 percent of surveys completed.

Service report results:

Problem	Number of times reported	Percent surveys completed
Lack of information on modifications	32	62
Parts availability problem	34	65
Lack of specifications	31	60
Lack of technician training	30	58
Uncertainty over warranty coverage	29	56
Concern about emissions tampering	30	58
Concern about creating a safety probelm	25	48
Concern about potential product liability	32	62

NADA GRAY MARKET VEHICLE SURVEY (BMW OBSERVATIONS)

Report No	Year-model	Observations
18	84-319i	Idle emission test—230 percent CO.
30	84-635	O_2 sensor wiring cut.
34	84-635csi	Modifier does poor work.
39	82-323i	Air pump removed; substandard catalyst.
43	635	Air pump belt disconnected; exhaust system leaking where modified; substandard catalyst and workmanship.
44	83-323i	Catalyst conversion substandard; air pump belt disconnected.
54	84-323	Exhaust leak on lambda system and catalyst; poor welding.

NADA GRAY MARKET VEHICLE SURVEY

Porsche Vehicles

General results:
- Response/vehicles: 54 total.
- Response to vehicle survey: 44 total.
- Potential sales losses: 41—76 percent of total responses.

Detailed vehicle survey results:

Item	Emissions items	
	Number of vehicles with missing item reported	Percent surveys completed
Catalyst	20	45
Oxygen sensor	24	55
Carbon canister	21	48
Tank filler restrictor	20	46
Unleaded fuel labels	22	50
EGR (diesel)	NA	NA
Certification label	24	55
Number of vehicles:		
No emissions items	11	25
All emissions items	4	9
	Safety items	
U.S. headlights	29	66
U.S. bumpers	21	48
VIN at windshield pillar	14	32
U.S. verson seat belts	14	32
Nonflammable seats	8	18
Side-door reinforcement	10	23
Certification label	17	39
Number of vehicles:		
No safety items	6	14
All safety items	2	5

Compliance with all emissions and safety items: 1 vehicle—2 percent of surveys completed.

Service report results:

Problem	Number of times reported	Percent surveys completed
Lack of information on modifications	16	36
Parts availability problem	18	41
Lack of specifications	14	32
Lack of tehnician training	12	27
Uncertainty over warranty coverage	23	52
Concern about emissions tampering	16	36
Concern about creating a safety problem	15	34
Concern about potential product liability	19	43

NADA GRAY MARKET VEHICLE SURVEY (PORSCHE OBSERVATIONS)

Report No.	Year-model	Observations
8	81-911	O_2 sensor wires cut.
12	83-930	Side-door reinforcement attached by bolts at front end only.
37	84-928	Failed 1984 New York State insection.

NADA GRAY MARKET VEHICLE SURVEY

Jaguar Vehicles

General results:
Responses/Vehicles: 19 total
Responses to Vehicle Survey: 19 total
Potential Sales Losses: 17-90% of total responses
Detailed vehicle survey results:

Item	Emissions items	
	Number of vehicles with missing item reported	Present surveys completed
Catalyst	6	32
Oxygen sensor	16	84
Carbon canister	9	47
Tank filler restrictor	11	58
Unleaded fuel labels	12	63
EGR (diesel)	NA	NA
Certification label	19	100
Number of vehicles:		
No emissions items	3	16
All emissions items	0	0
	Safety items	
U.S. headlights	16	84
U.S. bumpers	18	95
VIN at windshield pillar	11	58
U.S. version seat belts	11	58
Nonflammable seats	4	21
Side-door reinforcement	13	68
Certification label	13	68
Number of vehicles:		
No safety items	3	16
All safety items	0	0

Compliance with all emissions and safety items: No vehicles.

Service report results:

Problem	Number of times reported	Percent surveys completed
Lack of information on modifications	8	42
Parts availability problem	3	16
Lack of specifications	5	26
Lack of technician training	1	5
Uncertainty over warranty coverage	17	90
Concern about emissions tampering	9	47
Concern about creating a safety problem	7	37
Concern about potential product liability	13	68

NADA GRAY MARKET VEHICLE SURVEY (JAGUAR OBSERVATIONS)

Report No.	Year-model	Observations
12	84-XJ6 Sovereign	O_2 sensor and carbon cannister not connected.
19	84-VDP	Label riveted on right front inner fender—"Federal".
24	85-	No air pump or air injection ports; probably wrong wiring harness; no O_2 sensor wiring.

[The following information was subsequently received for the record:]

QUESTIONS OF THE CHAIRMAN AND THE ANSWERS THERETO

Question. Your testimony presents a clear picture of the magnitude of the odometer fraud problem. In your view, would a government requirement that cars have tamper resistant odometers help combat this problem?

Answer. I might note at the inception that neither I nor the National Automobile Dealers Association have the technical expertise to determine whether or not it is technically feasible to design an odometer that would have the requisite tamper-resistant qualities to present a meaningful obstacle to odometer rollback. Inasmuch as the practice of odometer rollback is so very lucrative, it is my view that a tamper-resistant odometer would have to be extremely well designed in order to avoid the likelihood that an enterprising technician could develop a cheap and quick method of overriding the system. Further, some mechanism would have to be developed to allow the general public to easily recognize that a replacement odometer had been installed in a vehicle.

I should also note that I have no method of determining what the cost of an effective tamper-resistant odometer might be or whether the degree of effectiveness of such a system would outweigh the cost.

However, after all of those caveats, it is my judgment that if it is technically feasible to design and construct an effective and relatively inexpensive tamper-resistant odometer system, it would help alleviate the problem of odometer rollback. I believe that the effectiveness of such a system would be greatly enhanced if it were a part of a larger program to create a uniform record of the history of odometer readings on all vehicles as has been proposed by Senator Exon in his bill, S. 475.

Question. You note in your testimony that roughly 50,000 "gray market" cars are expected to be imported into the U.S. during 1985. How significant a safety problem does this present? Please provide specific examples.

Answer. In practice, direct importation of nonconforming vehicles has become a major end-run around applicable Federal safety requirements. The safety problems associated with conditional importation are two-fold in origin: (1) surveys establish that very few vehicles have all of the required safety items installed and (2) in several cases, vehicle modification to comply with Federal emissions and safety standards have caused or contributed to safety problems.

As indicated in my testimony on February 21, 1985, NADA surveyed over 1,000 franchised dealers representing one or more selected import lines, including Mercedes-Benz, Porsche, BMW and Jaguar. Through December 31, 1984, NADA received and compiled survey responses on 393 1980 or later model nonconforming imports from dealers in 32 states. Only 4 cars or 1% of the vehicles surveyed clearly had all the safety items installed.[1] As to U.S. headlights and bumpers, 60% and 82% of the cars, respectively, did not have such equipment. Forth-three percent (43%) did not have any side-door reinforcement. Thirty-nine percent (39%) did not have U.S. seatbelt systems. The results of the survey were submitted for the record on February 21, 1985.

While the NADA survey and the results of a similar survey conducted by dealers for Mercedes-Benz of North America [2] both indicate substantial noncompliance with vehicle safety requirements, it is important to keep in mind what these surveys measure. Both surveys indicate whether certain safety items were installed in the vehicle, based on a visual inspection by dealership personnel. Dealers were not asked to determine whether the items functioned properly; nor were dealers asked to conduct any tests to determine whether the items complied with applicable performance standards, such as side-door reinforcement strength under FMVSS No. 214. Therefore, in all likelihood, actual noncompliance rates may be even higher than reflected in the surveys.

The second origin of safety problems associated with nonconforming imports is that modifications to such vehicles frequently cause or contribute to safety hazards. In addition to the examples of shoddy attempts at "Federalization" observed at my dealership and recited in my testimony—such as broomsticks painted black and installed as side-door reinforcement, several dealers reported modification-related problems in responding to the NADA survey, including:

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[1] Safety items on the NADA survey are: U.S. headlights, U.S. bumpers, VIN at windshield pillar, U.S. version seat belt systems, nonflammable seats, side-door reinforcement and safety certification label.

[2] Copies of 925 MBNA surveys were submitted for the record as an attachment to the statement by Mercedes-Benz of North America, February 21, 1985. MBNA results indicate 95% noncompliance with safety requirements.

Catalysts mounted next to fuel lines;
Catalyst mounted without heat shields;
Catalyst welded in against the vehicle body;
Improperly routed fuel lines;
Poor installation of side-door reinforcement;
Damaged fuel pump relay;
Driveability problems, stalling;
Missing belts;
"Jerry-rigged" wiring;
Exhaust system leaks; and
Side-door reinforcement attached by bolts at the front end only.

In our view, there is clear and unequivocal evidence of outright noncompliance with Federal safety requirements and of modification-related safety problems associated with nonconforming direct import vehicles. The Automobile Importers Compliance Association readily concedes that problems exist. And, agency personnel at NHTSA who are responsible for administration of the conditional importation program willingly admit that they cannot assure vehicle compliance.

When dealing with human lives, there simply cannot be an acceptable level of noncompliance with vehicle safety requirements. We again urge prompt passage of legislation to end the practice of conditional importation—a practice which has outlived any perceived need and which poses a growing threat to public safety. There truly is no other just and proper course of action.

Question. You mention that "gray market" imports place manufacturers and dealers in an unfair competitive situation. What is the magnitude of the price discrepancy between a "gray market" car and a car imported by a dealer for sale in the U.S.?

Answer. A major reason why foreign manufacturers and their franchised dealers are placed at a competitive disadvantage is that they must comply with far more stringent requirements than direct importers. In order for manufacturers to import vehicles for sale in this country, such manufacturers must develop, manufacture and certify vehicles to comply with all applicable Federal emissions and safety standards. Certified vehicles must be covered by emissions design, defect and five-year/50,000 mile performance warranties. Manufacturers are subject to fuel economy reporting, labeling, CAFE standards and penalties and "gas guzzler taxes". Manufacturers are also subject to the defect notification and recall provisions in both the Clean Air Act and Motor Vehicle Safety Act. Service and parts facilities must be established and maintained to insure that all necessary warranty work and recall campaigns can be performed expeditiously by trained technicians.

In order to fulfill many of these responsibilities, as well as to market and service vehicles at the retail level, franchised dealers must establish and maintain sales and service facilities, adequately train and staff their dealerships with service technicians, acquire all necessary tools and equipment and maintain extensive parts inventories. Performance of these responsibilities requires the commitment of substantial human and financial resources.

Simply put, vehicle manufacturers and their dealers have invested and committed to insure that their products are properly designed, manufactured, serviced and maintained during operation. Direct importers have none of these responsibilities. Some are mail-order operations which do not even maintain an office, let alone a service facility. All are free-riders on the product, consumer confidence and security created by others.

The absence of a "level playing field" places manufacturers and their dealers in an unfair situation in which they must sell against their own products imported through the "gray market". In some cases, they must sell against products which were neither designed nor intended for sale in this country.

In sum, the "price advantage" associated with direct imports is misleading. The American consumer thinks he is getting the same product for less, when, in fact, he is not getting the same product at all. There is no actual price discrepancy. The purchaser of a modified direct import may pay less, but he gets less—less product, less product reliability and protection, less serviceability and often less resale value.

In the final analysis, we must not let ourselves be diverted from the real issue before the Committee—what the American public is being sold through the "gray market". And, on this issue, the evidence is clear. Conditional importation poses a serious threat to highway safety, which will compound daily unless and until the practice is put to an end.

The **Chairman**. All right. Do we have two Mr. Jackson's with us?

Mr. **Michael Jackson.** Yes; that is correct, on two sides of the issue.

Mr. Chairman, my name is Mike Jackson, executive vice president of Euro-Motors, a franchised dealer for Mercedes-Benz, Porsche, Audi, Subaru, Saab, and Rolls-Royce, with locations in Bethesda and Marlow Heights, MD. I am here today to address the practice of conditional importation of nonconforming vehicles. I am here not only as a dealer spokesman for the National Automobile Dealers Association, but as a concerned American.

In recent years, we have witnessed a virtual tidal wave of vehicles conditionally imported into our country. Nearly 40,000 vehicles were conditionally imported under bond in 1984, a far cry from the 1,500 in 1980. I now understand that the National Highway Traffic Safety Administration recently logged a record of over 5,000 vehicles imported under bond in a single month.

Conditional importation of nonconforming vehicles has created nothing but problems, which grow in intensity every day the law remains unchanged. All these problems are documented in NADA's written statement for the record. I am here to alert you to perhaps the most serious problem—the growing threat which these vehicles pose to public safety.

In early October 1984, NADA sent a survey to franchised dealers representing one or more selected import lines, including Mercedes-Benz, Porsche, BMW, and Jaguar. Dealers were asked to complete detailed reports on emission and safety items and on service problems for each nonconforming import that came into the respective dealership prior to December 1, 1984.

Thus far, NADA has compiled survey responses on 393 1980 or later model year nonconforming imports from dealers in 32 States. With regard to compliance with safety items, the results send a clear warning. Only four cars, or 1 percent of the vehicles surveyed, clearly had all the safety items installed.

As to headlights and bumpers, 60 and 82 percent of the cars, respectively, did not have such equipment; 43 percent did not have side door reinforcement; 39 percent did not have the U.S. seatbelt system. The complete results of the NADA survey have been submitted for the record. Please keep in mind that the NADA survey shows only whether emission and safety items were on the car. We have no assurance that the installed items functioned properly.

In addition to completing the survey, several dealers reported specific safety problems to NADA, such as catalytic converters mounted without heat shields underneath cars. Photograph No. 1 which has been submitted for the record shows this catalyst installed. Photograph No. 2 shows a catalyst factory-installed with the correct heat shields.

Also in the compliance process, side door reinforcement bars must be installed in the car. Many people are cutting the bars in half in order to get them into the door and then rewelding them inside the door. We have a bar here from one such vehicle, which clearly shows that it was cut in half, put inside the door.

But now once it is in the door you can only weld it on one side. You cannot get to the top, the bottom, or the other side. Clearly, if this door was ever hit in an accident it would become a weapon rather than a safety device.

Let me now take a moment to tell you what we have seen at my dealership. In the last 9 months we have seen at least 35 cars which exhibit some attempt at modification; 15 cars did not have sealed beam U.S. headlights. Only two cars had the bumper reinforcement. None of the cars had seatbelt warning devices; 11 cars had side door reinforcement, in some cases either bolted in or of lightweight material.

Some specific examples of safety problems. Last Thursday we had a vehicle in our dealership where a rubber fuel line—factory version is metal—was installed within 1 inch of a catalytic converter. We have a photograph there which already shows the fuel line deteriorating, and that is a fire waiting to occur.

We have seen cars that have screws installed in the door frame to give the impression that reinforcement bars had been installed. However, if you open up the door and look inside, there is no door reinforcement, just the screws.

We had one car that had broomsticks installed in the door as the side reinforcement, and painted black.

Recently we had a customer who brought in a car complaining of sickening fumes inside the car. It was almost causing him to pass out. We examined the car and again the case was catalyst installed with no heat shields. The carpet was melting underneath his feet and putting poisonous fumes up into the car.

In 1983, this committee favorably reported legislation which would have put an end to conditional importation of vehicles. The reasons for your action then are even more compelling today. We are not dealing here with imported batteries from Belgium or perfume from Paris, but with a product which transports that most precious commodity—people.

Conditional vehicle imports were never designed for use in this country. We must act now to eliminate this needless risk to public safety by prompt passage of legislation to basically put an end to the practice of conditional importation of motor vehicles.

I thank you for the opportunity and invite any questions you may have.

The CHAIRMAN. Thank you, sir.

Mr. McElwaine.

Mr. McELWAINE. Mr. Chairman, I am accompanied by our Chairman, Mr. Steven Horvath, and we are here on behalf of our 7,000 dealer members, like our sister organization NADA, to petition this committee to take action to end the highway safety hazards that have been created by the importation of a growing volume of noncomplying vehicles for resale on the gray market.

Not only does the sale of these cars flout the law and thereby create an increasing disrespect for the law, which we talked about earlier today, but some of the jerry-built changes that are made in these cars, which have been described by Mr. Jackson, create an additional hazard in bringing these cars into supposed compliance.

We come here because we feel that legislative action is needed on this to close the loophole in the Safety Act which last year permitted more than 40,000 of these noncomplying vehicles to enter into commerce in the United States. This loophole was originally created to prevent hardship to returning U.S. servicemen and tourists who may have purchased a non-U.S. specification vehicle in Europe and would like to bring it back.

This justification no longer exists. These cars are readily available to servicemen and tourists that comply with U.S. standards. Congress should really act now to close this loophole, and Congress should act simply because the appropriate Federal agencies apparently are not able to police this influx of automobiles.

At her confirmation hearing before this committee in 1983, Ms. Steed affirmed that the gray market posed a serious problem. At that time she said: "This activity is under active consideration and is being pursued vigorously." Since that time, the importation of gray-market cars has increased fourfold.

I was disturbed—I should be a little more honest than that with the committee. I was appalled to hear Ms. Steed say this morning that the agency is now looking at the gray-market problem to see if there is a potential problem there. These agencies have been dealing with this problem since 1980.

The CHAIRMAN. Mr. McElwaine, by NHTSA's standards that is vigorous pursuit.

Mr. McELWAINE. I will not even comment, Mr. Chairman.

We have here, and I would like to submit this for the record—these are studies made of 925 gray-market Mercedes-Benz imported into the United States. They detail how each car was examined and studied and how 97 percent of them failed to comply with U.S. standards, and the other 3 percent are dubious at best. The NADA survey showed 1 percent complying. The California Air Resources Board study grudgingly conceded that maybe as many as 75 percent did not comply.

This really needs to be dealt with, and it needs to be dealt with by the Congress because for the consumer the hazards of purchasing a gray-market car are not confined to his person. They also include his pocketbook. He is going to wind up with.

A car which has—certainly does not have the same warranty as cars sold through the franchised dealers—in fact, it may not have any warranty at all.

A car that the major warranty companies, such as General Warranty and American Warranty, will not issue a service contract on.

A car whose title may be questionable. He may be getting a stolen car, a wrecked car, a car that was built 2 or 3 years before he bought it and it is still sold to him as a new car.

He is getting a car in which the odometer has been replaced, since the original model had the odometer set in kilometers and he has now got one with miles on it, and it is almost always set at zero.

He has a car where he is going to have difficulty getting dealership service, because the franchised dealers simply do not want to handle those cars. They do not have the trained mechanics for it and they are very concerned about a potential liability.

And he is also facing the possibility that the car may simply be seized and turned into a very large coffee table.

I would like to add for the record a story from the Fresno Bee, "Six luxury cars are seized," and a press release from the Department of the Treasury, which also adds that they have seized 16 automobiles and adding dramatically, if redundantly, that these cars may be "explosive time bombs." I would like to add those to the record.

I would also like to add a study done by one of our dealers with photographs showing the difference between a U.S.-specification car and a gray-market car, as well as a warning on titling problems these cars may face in State titling.

Mr. Chairman, I think it is time that this gray market was closed off and the customer was given an opportunity to buy the kind of car he thinks he is getting.

Thank you, sir.

[The statement follows:]

STATEMENT OF THE AMERICAN INTERNATIONAL AUTOMOBILE DEALERS ASSOCIATION

In the past five years, the importation of automobiles that do not comply with United States safety and emission standards for re-sale through the "grey market" has grown from a trickle to a flood. In 1984, an estimated 40,000 imported cars were sold on the U.S. grey market. Surveys indicate that as much as 99 percent of these cars did not fully comply with U.S. standards.

AIADA estimates that, unless checked, the influx of grey market cars could reach as high as 100,000 units in 1986.

By failing to halt the influx of non-complying vehicles, the National Highway Traffic Safety Agency has created two classes of automobile importers and retailers—those who must abide by the law, certifying under penalty of the law that their vehicles comply with U.S. regulations, that they have been properly tested before such certification; and those who simply enter their vehicles for a one-time lab check and submit photographs of dubious authenticity to the NHTSA, in order to sell their vehicles in this country.

There appears to be a disregard of the principle of "equal protection under the law" when one class of retailers is subject to a fine of $10,000 for simply "tampering" with the emission controls of a vehicle, while another class may, with impunity, sell vehicles that do not comply with either the safety or emission requirements of this country.

In October, 1983, when confirmed by this committee for her appointment as Administrator, Ms. Steed affirmed her concerns over "grey market" imports and said that this activity is "currently under active investigation and is being pursued vigorously." Since that time, the volume of grey market imports has increased fourfold.

The continuing sale of grey market cars constitutes a risk to the consumer's safety as well as to his pocketbook. The jerry-built manner in which most of these cars are modified not only fails to provide the passenger protection required under U.S. law, but frequently creates additional hazards. The Department of the Treasury has claimed that these modifications frequently transform the car into "an explosive time bomb."

Purchasers of grey market cars are finding that: (a) they frequently have no warranty protection at all on their supposedly "new" cars; (b) the larger warranty companies, such as General Warranty and American Warranty, will not issue extended service contracts on grey market cars; (c) franchised dealers are unable to service their grey market cars because of mechanical differences and the threat of liability damages; (d) the resale value of such cars is significantly less than for U.S. models and franchised dealers refuse such cars as trade-ins; (e) manufacturers have no way to reach them in the event of a safety recall of the vehicle.

The unregulated state of the grey market has created a thriving outlet for stolen cars, wrecked cars and cars bearing fradulent odometer readings.

Many states, including California and Florida, have taken steps to reduce the sale of grey market cars; Canada simply forbids their importation. It is time the U.S. Congress closed the loophole in the law that permits the importation of non-complying vehicles. The original rationale for this special treatment has long since been eroded.

The sale of grey market automobiles in the United States constitutes an affront to the environment and a risk to the consumer's pocketbook as well as his personal safety. The jerry-built manner in which most of these cars are modified not only fails to provide the passenger protection required under U.S. law, but often creates additional hazards. The Department of the Treasury has claimed that these modifications frequently transform the car into "an explosive time bomb."

Despite a substantial body of evidence establishing that grey market cars almost always fail to meet U.S. safety and emission standards established for them, and that customers purchasing these cars are denied warranty coverage and other protections guaranteed purchasers of imported cars through normal distribution channels, the concerned Federal agencies have continued to allow grey market operators to grow and flourish.

The responsible agencies have permitted the influx of non-complying cars despite the actions of three Congressional committees, all of which have unanimously asserted that automobiles should not be imported into this country unless they have been certified by the original manufacturer to comply with U.S. standards.

By failing to halt the influx of non-complying vehicles, the National Highway Traffic Safety Agency has created two classes of automobile importers and retailers—those who must certify under penalty of the law that their vehicles comply with U.S. regulations, that they have been properly tested before such certification; and those who simply enter their vehicles for a one-time lab check and submit photographs of questionable authenticity to the NHTSA, in order to sell their vehicles in this country.

The legislative record shows clearly that it was never the intent of Congress that the agencies use their discretionary authority in cases of individual imports to permit the wholesale importation of non-complying vehicles for resale, after dubious modifications to bring such vehicles into supposed compliance.

The original rationale for the personal use exemption was that many models of European cars were not available for the U.S. market since the manufacturer had not elected to produce such cars to meet U.S. specifications. This rationale has long since been eroded by the actions of the manufacturers to produce a wide variety of models for the U.S. markets. There is no factual justification to continue to permit the importation of non-complying vehicles.

THE NEED FOR CONGRESSIONAL ACTION

Congressional action is required to clarify the obvious intentions of the legislators who drafted and approved the original safety laws in 1966. Such clarification has been necessitated by unforeseen developments in the marketplace and by the inability of the Federal regulatory agencies to control the influx of non-complying vehicles.

In October, 1983, when confirmed by this committee for her appointment as Administrator, Ms. Steed affirmed her concerns over "grey market" imports and said that this activity is "currently under active investigation and is being pursued vigorously." Since that time, the volume of grey market imports has increased fourfold.

When a Federal agency is confronted with a record of violations of the law so extensive, when an agency expresses its own inability to enforce the law, then a rational individual must conclude that the practice must be stopped.

Congressional action is required because the designated Federal agencies have failed to show the necessary diligence or sense of urgency to deal with a problem that has multiplied in a few years.

During the four years that the Environmental Protection Agency has been studying the problem, the influx of grey market cars has grown from 8,000 to 40,000 per year, with every indication that next year's total may double this year's. The EPA's response to our industry's pleas for action has been to indicate they will "announce" various rule-making procedures as "options" for dealing with the problem. At a 1984 Congressional hearing, the NHTSA Administrator said the agency considered the problem "serious," but no further action has been taken.

Meanwhile, consumers who purchase these grey market cars in ever-growing numbers, must operate under the code of caveat emptor. The buyer of such cars can only hope that the modifications made to the car to enable it to pass a one-time EPA test do not jeopardize his safety. Many such cars have been found to have been modified by welding a GM catalyst, which produces extremely high temperatures, directly alongside the fuel line.

Other cars examined by Mercedes-Benz dealers were found to have steel bars designed to prevent side penetration in accidents that were held in place only by metal screws or bolts. None of these cars carry the warranty protection provided by the manufacturer's United States distributors on cars built for the U.S. market and most of them have no warranty coverage at all.

In the event of a safety recall, the manufacturer has no way to communicate with these grey market car owners, since it has no record of the transaction. Franchised dealers cannot or will not provide service work for the cars, since they do not stock parts for these models, their mechanics are not trained to work on them and they are subject to a $10,000 fine for tampering if they modify the non-standard emissions system. The problems of liability in these cases are very real.

Another peril for grey market buyers is the annual emission inspection in states where such inspections are required. There is a very good chance the car will fail the emissions inspection and an even better chance that the car cannot be modified so that it will pass the inspection.

SAFETY ACT NEEDS AMENDING

Passage of an amendment to Section 102(5) of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1391(5)) will assure that the American consumer who wants to buy a foreign-made vehicle will have confidence that the vehicle was produced so as to comply with the applicable U.S. safety and emission laws that apply to all other vehicles, foreign and domestic, and their owners. Also, it will assure that vehicles will be fully warranted; that spare parts will be available; that all service will be able to be performed by qualified service technicians; that all U.S. laws such as gas guzzler, fuel economy, etc. apply to it; and, finally, that American businessmen who have invested in a legitimate enterprise and their thousands of employees will no longer be undercut by others who subvert basic U.S. laws which are designed to assure that all vehicles are safe and that they comply with the nation's emission laws.

Purchasers of grey market cars are finding that: (a) they frequently have no warranty protection at all on their supposedly "new" cars; (b) the larger warranty companies, such as General Warranty and American Warranty, will not issue extended service contracts on grey market cars; (c) franchised dealers are unable to service their grey market cars because of mechanical differences and the threat of liability damages; (d) the resale value of such cars is significantly less than for U.S. models and franchised dealers refuse such cars as trade-ins; (e) manufacturers have no way to reach them in the event of a safety recall of the vehicle.

Indeed, the unregulated state of the grey market has created a thriving outlet for stolen cars, wrecked cars and cars bearing fraudulent odometer readings. Since the grey market cars carry instruments calculated in kilometers, odometers must be replaced when the cars are modified. In most cases, these new odometers are set at "zero," regardless of the actual mileage on the vehicle. Some grey market cars purchased as new have been found to be one or two years old.

In many cases, the title to the vehicle is questionable and the purchaser may have great difficulties in obtaining a valid ownership certificate.

There appears to be a disregard of the principle of "equal protection under the law" when one class of retailers is subject to a fine of $10,000 for simply "tampering" with the emission controls of a vehicle, while another class may, with impunity, sell vehicles that do not comply with either the safety or emission requirements of this country.

The illogic of the present system is best demonstrated by assuming that a businessman went to the NHTSA and the EPA and asked for permission to enter 50,000 imported vehicles a year into U.S. commerce. The automobiles would not comply with U.S. safety and emission standards, but, the businessman assured the agencies, he would modify them after importation and submit evidence that such modifications had, indeed, been carried out.

Unquestionably, the agencies would deny his request, pointing out that Federal law demands that such vehicles be thoroughly tested by the manufacturer for compliance before their importation, that the assembly lines be available for random checks, that the cars be subject to unscheduled testing before sale and that the vehicles be available for recall by the manufacturer in the event they were found not to be in compliance according to the certification.

Yet these same agencies are permitting the importation of non-complying vehicles in volume, simply on the grounds that they are being imported by a few score entrepreneurs rather than by a single corporation or individual. Such hair-splitting does not make sense, either from a legal sense or as a matter of logic.

Many states, including California and Florida, have taken steps to reduce the sale of grey market cars; Canada simply forbids their importation. It is time the U.S. Congress closed the loophole in the law that permits the importation on non-complying vehicles. The original rationale for this special treatment has long since been eroded.

[The following information was subsequently received for the record:]

QUESTIONS OF THE CHAIRMAN AND THE ANSWERS THERETO

Question. To what extent do you believe grey market auto imports constitute a safety problem?

Answer. Failure to comply with U.S. safety standards constitutes a safety problem. Documentary evidence has been produced that virtually no grey market import fully complies with U.S. law. Considering that, in 1984, at least 37,000 grey market imports entered the country and the current rate of importation indicates that 50,000 will be sold in the U.S. in 1985, it is obvious that the continued entry of grey market cars into U.S. commerce constitutes a safety problem of significant and growing import.

The issue of non-compliance, however serious, is only a part of the overall safety problem posed for customers who purchase these largely unregulated vehicles. Jerry-built and incompetent modifications made to these vehicles by largely unqualified and frequently unscrupulous operators often transform sound, well-constructed automobiles into potential hazards to the lives and safety of the driver and passengers.

Modifications that create safety hazards most frequently concern the installation of catalytic converters in cars for which they were not designed, usually in close proximity to fuel lines; and the cosmetic insertion of internal doors bars to enable the vehicles to appear to comply with Federal side penetration standards.

The improperly done catalyst installations result in a serious fire hazard. The U.S. Customs Service has described such vehicles as "explosive time bombs."

In a side-impact collision, the cosmetically-installed door bars, usually cut in half for ease of insertion, then spot welded, but frequently held in place only by metal screws (and in one particularly flagrant violation, consisting of a black-painted broomstick!), become projectiles, endangering the lives and safety of the passengers.

A serious safety hazard is created by the fact that, since the authorized manufacturer/importer has no record of the importation of the grey market vehicles, there is no way to reach the owners in the event of a safety recall. The Federal requirement that all manufacturers maintain up-to-date owner lists and that owners be notified promptly in the event of a safety recall is thus being flouted by the grey marketers.

The unregulated state of the grey market has also permitted the sale of previously-wrecked automobiles as "new vehicles." An improperly repaired wrecked car obviously constitutes a safety problem for its driver and passengers, as well as for other motorists on the road.

U.S. safety standards have been promulgated to protect the lives and health of our citizens. Automobiles that fail to comply with those standards, therefore, by definition, constitute a safety problem. Numerous studies have been made of grey market cars, by Mercedes-Benz dealers to whom they have been brought for service, and by the National Automobile Dealers Association, as well as by the California Air Resources Board. Of all the cars surveyed in these studies the number that appear to comply with all Federal regulations are so few that they would appear to be statistically insignificant.

This leads to the conclusion, which is endorsed by the manufacturers of those cars most frequently entered into the grey market, that it is not possible to modify an automobile not specifically built for the U.S. market to conform 100 percent with U.S. standards at a cost that is commercially acceptable.

Once this premise is accepted and understood, it becomes clear that the only way Congress can assure that the benefits of U.S. safety standards are extended to all car buyers is to require that all automobiles entering the United States be certified by the original manufacturer to meet this nation's standards.

Question. What actions have been taken in California and Florida to reduce the volume of grey market activity?

Answer. California has taken advantage of its air pollution control authority to restrict grey market in that state. California Air Resources Board (CARB) tests of grey market vehicles have found that none tested met Federal standards, let alone the stricter California new car standards. The State currently bars titling of grey market cars with less than 7,500 miles on the odometer, since these are classified as new cars under California law. There are reports that grey market dealers roll up the odometer to evade the law. In light of the widespread abuse, the state is currently considering alternative approaches to the grey market problem.

California does have a vigorous enforcement program and responds quickly to reports of dealers operating without a license. It shuts down businesses found to be in violation of the law.

Both California and Florida, like many other states, have cracked down on titling requirements for grey market vehicles. In the past, many such vehicles were titled on the basis of foreign documents which offered no proof of ownership, many of which were essentially homemade documents which permitted the maker to include misleading model year and prior use information. Both states now require the vehicle owner to produce the documents which are accepted as official proof of ownership in the country in which the vehicle was originally sold.

Florida passed legislation—which has been copied by a number of States—which requires that the applicant for a certificate of title must present both the EPA and the DOT bond release letters before the vehicle may be titled. Recently, proponents of the grey market have introduced a bill which would weaken the law to (1) permit vehicles to be sold to consumers despite the absence of federal approval of the modifications and (2) permit the vehicle to be registered and operated upon the roads for up to a year before the EPA and DOT approvals have been obtained. Both changes would amend Florida law to permit actions which are prohibited under federal law.

A number of states have considered inspecting grey market vehicles to ensure that they meet federal and state safety standards and present no modification-caused safety hazards. However, this proposal has generally been rejected as beyond a state's expertise and resources.

In general, the grey market presents a wide range of law enforcement problems for the states in the areas of safety, consumer protection, dealer licensing and regulation, detection of stolen vehicles, and the assurance of accurate age, ownership, and mileage information through the vehicle titling process. In addition, the primary effect of action in one state is simply to shaft grey market activity to another.

Question. In dollar terms, what is the magnitude of the grey market problem for auto dealers?

Answer. It is not possible to ascribe any loss to franchised automobile dealers as a result of the grey market activities in dollar terms. The manufacturers producing the cars most frequently encountered in the grey market—Mercedes-Benz, BMW, Porsche—allocate vehicles to their various export markets according to their productive capacities. All of the U.S. dealers in these vehicles are currently selling their entire allocations. Ending the grey market would not increase these allocations, since these cars have previously been allocated to and sold at retail in other countries.

Grey market cars, therefore, are not depriving franchised dealers of sales; nor would ending the grey market increase their allocations or sales.

The dealers' very deep concerns over the expanding grey market are rooted in the damage being done to the reputation of the vehicles they sell resulting from consumer dissatisfaction with vehicles that have been modified from their original conformation in a haphazard and inexpert manner. These grey market cars are being brought to franchised dealers for service in growing volume, since the grey market operators seldom provide any service at all.

Franchised dealers frequently refuse to service grey market vehicles at all, for fear of "tampering" charges stemming from operating on non-standard emission control devices and from the potential liability involved in servcing cars that may have been made unsafe through inexpert modification.

Such actions create resentment on the part of the grey market purchaser, since he frequently is unable to distinguish between a U.S. model Mercedes-Benz and one that has been brought in through the grey market and modified by some independent operator. The absence of a U.S. warranty, the refusal of the major warranty companies to issue service contracts on grey market cars and the inability to buy insurance coverage on these cars from many major insurers frequently negates decades of effort on the part of franchised dealers and their manufacturers to build up a national reputation for reliability, for service excellence and customer satisfaction.

Question. Do you see any legitimate role for the business of modifying European-made cars to meet U.S. safety and emission requirements?

Answer. If one accepts the obvious conclusion of the various studies carried out on grey market cars and the position of the originally manufacturers of these cars, namely that vehicles not manufactured orginially to comply with U.S. standards cannot be modified to meet those standards at commercially acceptable costs, then the answer must be that there is no legitimate role in U.S. commerce for those attempting to modify non-U.S. models for resale in this country.

Certainly, the performance of the modifiers over the past five years give no basis for assuming they have the capacity to modify non-complying vehicles in such a way that they truly meet all applicable U.S. standards. At least 95 percent of their product falls short of the minimum requirements and it appears reasonable to claim that not a single grey market car has been sold that fully qualifies as meeting all U.S. requirements.

The two-year-old position of the trade association representing the grey marketers, that they can "self-police" their members to eliminate violations of Federal requirements would seem to be invalid. Certainly, in the time they have endeavored in implement such self-regulation, there has been no discernible improvement in the performance of the modifiers.

Finally, it must be clearly undertood that the plethora of cottage businesses that have sprung up in support of the grey market are a consequence of a serious misapplication of the law. It is difficult to justify the continued existence of a business that survives only because of distortions of the intentions of the lawmakers.

The legislative record shows clearly that it was never the intent of Congress that the agencies use their discretionary authority in cases of individual imports to permit the wholesale importation of non-complying vehicles for resale, after dubious modifications to being such vehicles into supposed compliance.

The original rationale for the personal use exemption was that many models of European cars were not available for the U.S. market since the manufacturer had not elected to produce such cars to meet U.S. specifications. Today, virtually the only cars produced by European manufacturers that are not available in a U.S. model are those the manufacturer has determined cannot be modified in any fashion to comply with U.S. law.

A wide variety of models are produced for the U.S. market, thus evading any original justification for the personal use exemption. There is no longer any factual justification to continue to permit the importation of non-complying vehicles, particularly in view of the undeniable record showing that such cars have become a serious safety problem.

The only remaining argument the grey marketers have against legislative action to require that very imported automobile be certified by the original manufacturer to comply with U.S. laws is that such action would jeopardize what has become a lucrative business for them.

Claims that such legislation would force them to close their business and reduce employment, howerer, should be regarded as essentially self-serving. The vast majority of compliance garages were in business long before the existence of the grey market. For most of them, compliance work provides only a faction of their income. Without the grey market they will continue to prosper with the customizing and repair work they were doing long before entrepreneurs discovered the loopholes in U.S. safety and emission control standards that enabled them to develop the grey markets.

The CHAIRMAN. Thank you, sir. We will be happy to receive any documents, although they may not be printed in the record.

Mr. Benjamin Jackson.

Mr. BENJAMIN JACKSON. Thank you, Mr. Chairman.

I am Ben Jackson, executive director of the Automobile Importers Compliance Association. The Automobile Importers Compliance Association is a nonprofit trade association composed of persons who engage in the importation, compliance, modification, and selling of direct import automobiles.

Direct imports are vehicles that were not originally manufactured in compliance with U.S. safety and emissions standards, but which are subsequently modified to meet such standards. AICA is composed of about 300 businesses who account for about 70 percent of the 45,000 direct imported vehicles imported in 1984. AICA members account for about $1 billion in sales, with about $200 million in value added in the United States.

Legislation such as H.R. 1006 would eliminate this industry and result in an increase in price of autos to U.S. consumers. The typical direct import vehicle is purchased in Europe, either by an individual U.S. citizen or by a commercial importer. The vehicle may be either new or used, and the purchase price is usually half the U.S. dealer price for a comparable vehicle.

The vehicle may be insured and shipped to the United States for about $1,000. The importer must pay a duty of 2.6 percent of the purchase price of the car. The car is entered into the United States under customs bond and a modifier performs the necessary safety and emissions modifications.

The typical safety modifications are installation of door reinforcement beams to protect the occupants from side impact, exchange of the speedometer with one that reads in miles per hour rather than kilometers per hour, installation of front and back side reflectors so that the vehicle can be easily seen from the side, exchange of the European headlamps with U.S. standard sealed beams, installation of a rollover check valve to prevent flow of gasoline through the fuel system in the event the vehicle rolls over, bumper reinforcements so that the vehicle body will be protected during low-speed impact.

There are other minor modifications which, together with the ones above, are documented on the DOT statement of compliance, along with engineering analysis of the door beams and bumpers, and photographs evidencing the work are sent to NHTSA in Washington.

For this service, the modifier will charge about $2,500. The emission modifications and testing will cost about $3,000 more. It currently takes about 3 months to process the statement of compliance. When DOT reviews and approves the statement of compliance and EPA approves the emission modifications and tests, the vehicle may be entered in the United States and operated on the streets and highways. The direct import vehicle cannot be legally imported until and unless DOT approves the safety modifications.

The vehicle used in the example above may be purchased in Europe for about $11,500. After transportation, bonding, duty and modification, the vehicle will cost about $19,000. The counterpart to this vehicle sold through a U.S. dealership is about $32,000.

It is important to note that the high cost of the U.S. version vehicle cannot be attributed to the U.S. safety and emission requirements. These costs to the original manufacturer for U.S. version vehicles are about $1,000.

There are a number of problems with the direct import industry which can be addressed without elimination of the business activity. There is poor communication to modifiers as to what must be done to assure proper safety modification of direct imports. The compliance review process takes too long, and there needs to be more oversight of the modification activity.

AICA is taking specific action to deal with the problems mentioned above. AICA is working with the DOT to develop more formal communication of compliance requirements so that modifiers will be better informed as to what is needed for each vehicle.

Also, AICA will establish documentation standards which will advise the modifier on how best to demonstrate compliance. Also, we are advised that DOT will soon publish a handbook which will assist in the communication of requirements to the modifier.

AICA has established a compliance statement review program whereby we will compare compliance statements with requirements that have been worked out with DOT. This will reduce DOT review time and rejections and thus shorten the compliance review period.

AICA has adopted a self-policing program which will be introduced late this spring. Under this program, AICA will hire third-party inspectors who will inspect direct import vehicles to determine compliance. Where problems are found, sanctions may be imposed and the Federal authorities will be notified.

The AICA self-policing concept was adapted from the programs implemented by the Recreational Vehicle Industry Association and the Truck Body and Equipment Association. Members of both of these associations modify incomplete vehicles to be in compliance with applicable safety standards.

Thus, while there exist problems in the direct import compliance industry, we believe these problems can be solved without elimination of the industry. We believe that the direct import industry provides a valuable arbitrage function in the pricing of autos by appropriately reflecting the change in product costs relative to the purchasing power of the U.S. dollar.

Of course, there are those who would like to maintain the highly inflated pricing structure by eliminating the direct import industry. The effect of eliminating of the direct imports will be to cause an increase in the price of cars sold to U.S. buyers, put many thousands of Americans currently employed in the direct import business out of work, and provide no significant improvement in safety.

Thank you, sir.

[The following information was subsequently received for the record:]

QUESTIONS OF THE CHAIRMAN AND THE ANSWERS THERETO

Question. 1. In your view, do direct auto imports create a significant safety problem? What proportion of the direct import cars are completely modified in accordance with U.S. safety standards?

Answer. We do not believe that propely modified direct imports create a significant safety problem. Pursuant to our request last year, the National Highway Traffic Safety Administration advised us that they had not received any safety related complaints for direct import vehicles. We have made the same request this month and we expect an answer soon.

The basic safety modifications are fairly simple and straight forward and impose no substantial technical challenge. Many European version vehicles are originally designed to meet many of the U.S. safety standards. Listed below are the modifications required for a typical direct import sedan together with an explanation of each modification.

MERCEDES BENZ 500 SEL

Doorbeams—Protect occupants from side impact.

Bumpers—Prevent damage to body during low speed impact.

Speedometer—Record speed in miles per hour rather than kilometers per hour.

Ignition Key Seatbelt Buzzer—Remind occupants to engage seatbelt.

Rear Door Locks—Install locks operated by push pull knob to prevent accidental unlocking of door.

Lights Front and Rear—Conform with U.S. lighting requirements for sealed beams and side markers.

Rollover Valve—Prevent gas spill during rollover.

VIN Number—Permit identification of vehicle from the outside.

Under the DOT-NHTSA regulations an importer must provide to DOT a completed statement of compliance for each direct import vehicle before DOT will notify Customs that the vehicle may be entered into the U.S. and the performance bond may be released. The statement of compliance must show evidence of the modifications by a narrative of what was done and photographs of the installed equipment.

Please note that it is possible that the emissions modification to a direct import vehicle is possibly a safety concern because the installation of the catalyst (a key feature in the emission control system) is a source of heat which can cause safety problems if it is not properly installed. For example, a heat shield should be installed in certain applications to assure that the catalyst does not overheat adjacent parts of the auto. The catalyst should not be placed near the fuel or evaporative emission control lines. AICA is taking steps to both assure that all the safety related equipment is properly installed and that emissions modifications are performed with safety in mind. Please see more detail on this in the response to Question 3. below.

Even though the DOT procedures require evidence that the safety modification work has been performed, we believe that vehicles are imported that are not modified. There are essentially four categories of such vehicles. First, there is an unknown number of vehicles imported under the exemptions permitted by DOT and EPA regulations which result in the importation, operation and, in some instances, sale of European vehicles which are not modified to meet U.S. safety and emissions standards. We believe that the non-resident exemption likely explains the bulk of non-U.S. version vehicles that are imported and not modified. Under this exemption a foreign national needs only to claim that he is importing the vehicle for personal use, not to exceed one year. The assumption underlying this exemption is that it will be used by the foreign national for his temporary stay in the U.S. and exported when the temporary stay is over. However, what we believe happens in some instances is the foreign national sells the vehicle at a considerable profit because of the large difference in price between U.S. and European prices and returns to his country. In order to assure that such vehicles are brought into compliance, Customs must "track down" the vehicle. There is no bond required and there is no restriction on the use of such vehicles. AICA has requested details on the non-resident exemption from DOT, EPA and Customs, however, there does not appear to be sufficient record keeping to determine how many non-resident exemptions are used each year. We believe that the non-resident exemption should be either eliminated or vehicles imported by non-residents should be bonded.

Second, there are vehicles that are imported and declared as non-complying vehicles and bonded, but they are operated on the streets and highways prior to modification. Although EPA regulations proscribe such use, these vehicles represent a category of vehicles that are not modified prior to use. These vehicles may be properly modified, but any inspection of such vehicles prior to modification would reveal noncompliance.

The third category of noncomplying imports are vehicles that are properly modified to meet safety requirements but are changed by the owner. We believe that this situation is most likely to occur where an owner desires to have the European headlights installed on his vehicle. Any reversal of other modifications is not practicable. We do not believe that the practice of safety modification reversal is widespread. Please note that the self-policing procedures discussed in the response to Question 3 require that removed equipment be exported.

Finally, the fourth category of noncomplying direct imports would be where the modifier either does not do the modifications that are reported to DOT or performs the modifications in a way that does not result in a proper modification. For example, using aluminum tubing to fabricate the bumper reinforcement. The aluminum may appear sufficient to strengthen the bumper in the photographs sent to DOT, but the material may not be strong enough to meet the FMVSS. This situation is specifically addressed in the response to Question 3.

This discussion above is an attempt to respond to the question admittedly without sufficient data to quantify the percentage in each category. However, we would like to point out that the surveys conducted by NADA and Mercedes Benz of North America appear to be flawed by the inclusion of all direct imports into the same category regardless of the relevant history of the vehicle. We have requested the details related to the NADA survey so that we may attempt to make a determination of the validity of the claims made by NADA concerning this survey. We have not requested the same details from MBNA because we do not have the staff to analyze the response if it were provided.

Question. Your testimony shows a considerable price differential between a direct import car which is modified to meet U.S. standards and a European car purchased through a franchised dealer in this country. What, in your view, accounts for the significant price differential?

Answer. We believe the price differential between U.S. and European version vehicles is primarily related to price structure maintenance by the original manufacturer and the U.S. distributor and is not related to cost. This point is illustrated by a point-by-point explanation of the relevant costs at issue.

For example, a German version Mercedes Benz 500 SEL with equipment comparable to the U.S. version (i.e., fully loaded) has a list price of about 89,000 Deutsche Marks. At today's rate of exchange (3.25DM/Dollar) this amounts to $27,384. This assumes that the car is purchased at German retail which allows a selling German dealer a margin of about twenty percent (20%). Shipping to the U.S. (average of East Coast and West Coast delivery) duties and bonding will be about $2,000. Safety and emission modifications will cost about $5,500. Thus, the total cost is about $35,000. A two year warranty may be purchased to supplement the one year or twelve month factory warranty for about $1,000. This cost of the direct import including warranty of about $36,000 can be compared with the U.S. dealer list price of about $54,000. About the same percentage difference between U.S. and European prices exists for BMW and Porsche and other European makes as well.

The difference in the prices of the comparable vehicles is not attributable to emission control or safety features of the U.S. version. According to DOT, safety compliance costs the original manufacturer about $470. According to EPA, the emission controls cost the manufacturer about $600. AICA is aware that emission controlled (U.S. equivalent) vehicles are now being offeed in the German market for $700 more than the uncontrolled vehicles. Emission controlled vehicles are now being offered in the German home market because several states in Germany have provided tax credits for the purchase of emission controlled cars. Also, unleaded gasoline is now being sold in Germany. This adoption of emission controls and use of unleaded gasoline has occurred because the German people are concerned that auto pollution is killing their trees.

We believe that the enormous price differential discussed above results in profit to the maker and his U.S. organization. However, AICA has no firsthand knowledge of all the relevant price and cost items applicable to the foreign maker and his U.S. operation. Please see the comparison below that lists the known costs and prices between a direct import and a U.S. version vehicle used in the example above.

	Direct import	U.S. version
European purchase price	$27,384	[1] Unknown
Transportation, duty, and bonding	2,000	[2] Unknown
Emission controls	3,500	$600
Safety modification	2,000	460
Warranty cost	1,000	Unknown
Total price in U.S.	35,884	54,000

[1] This would be the cost for the U.S. distributor to purchase the vehicle from the manufacturer.

[2] Transportation costs for a direct import is about $1,000. Duty for all imports is 2.6 percent of declared value. For a direct import, the declared value is the purchase price plus shipping. A bond for the value of the car is required for direct imports and costs about $250. A bond is not required for the U.S. version vehicle.

Question. To the extent that a "gray market" problem exists, what action should be taken to remedy this situation?

Answer. We believe that there is potential for noncompliance related to direct imports as illustrated by the identification of the categories of potential noncompliance noted in the response to Question 1. However, AICA has affirmative plans to address category four noncompliance by modifiers which occurs either through ignorance or intention. For that purpose, the AICA Board of Directors adopted on December 5, 1984 the concept of self-policing. Procedures which would implement self-policing have been prepared and circulated to the AICA members. The self-policing program known as AICA Compliance Enforcement Program (ACEP) will be submitted for adoption by the members of AICA at its annual meeting in Atlanta, Georgia on April 26-28, 1985. ACEP consists of essentially three parts: sticker utilization, inspection and sanctions. Stickers will be issued to participants (participants may include non-members of AICA) which will be affixed to a vehicle after the completion of the three basic phases of compliance activity: safety modification, emission modification and emission testing. AICA will hire third-party inspectors which will inspect the facilities and vehicles of participants. The inspectors will prepare reports which will be forwarded to the ACEP Committee. The ACEP Committee will impose sanctions where noncompliance is detected. Sanctions can range from warning letters to expulsion from ACEP. Serious sanctions will be noticed in the AICA newsletter, Direct Input, which is furnished to DOT and EPA officials. AICA has requested from EPA and DOT an indication of what action would be taken upon notification of an ACEP sanction. A copy of the DOT response is attached. Also, a copy of the ACEP Procedures Manual is attached.

We also believe that additional oversight of the direct import industry by DOT may be desirable. In that regard, we have discussed with DOT, OMB and your staff an amendment to the National Traffic and Motor Vehicle Safety Act which would authorize "user fees" to fund the inspection and approval of direct import vehicles by DOT employees. We believe that such a fee may be desirable because the direct import modification activity attracts many small businesses that require some degree of oversight. In the traditional sense of compliance obtained for dollars spent, it is always difficult to justify expenditure of Government resources for small volume operations. However, if the oversight is funded by the industry participants, the necessary oversight may be obtained without increasing the Federal budget. This will avoid the alternative of declaring that the industry is too dispersed to properly regulate, thus permitting legislative or regulatory changes that would eliminate direct imports. We have attached a draft amendment to the Safety Act which would authorize "user fees" for direct imports.

Finally, we believe that the introduction of home market emission controls will substantially reduce the compliance modifications needed to demonstrate compliance with EPA emissions standards.

In summary, we believe the following actions are important to deal with the proper regulation of the direct import industry.

(1) Eliminate non-resident exemption or require bond.
(2) Adoption of effective industry self-policing.
(3) Authorize "user fee" for DOT inspection and approval of direct imports.

The CHAIRMAN. Thank you, sir.

Mr. Schuettler.

Mr. SCHUETTLER. Mr. Chairman and the committee, I feel a little bit awkward here, because I am sitting here and I am not prepared like all the people with their speeches and everything.

I would like to introduce myself. I am the owner of a repair shop that also modifies nonconforming automobiles. To all the stories you have heard here and everything you have seen in the newspapers and everything else, I would like to give you my view.

We repair and modify automobiles that do not meet the American standards. People bring them over from Europe. They buy them over there—a private individual will bring them over here—and they ask us to modify them.

I have a record of 15 years working in the United States. I started off working for a dealer and I worked at one of the biggest BMW and Datsun dealers in the Washington area for almost 14 years. I also had some experience before I came here.

On the work we do, I do not have any reports. I have no pictures. But I invite you to come over and see what we do. I would be glad to show you our shop and show you how we work and what we do on cars.

What strikes me a little bit is that we have all of the car stories reported by those other people—witnesses. I listened, but I have not seen anybody who is a witness who has bought one of those cars that has all these problems. That is because all the people we deal with on the cars I modify for them are very happy with their automobiles. We show them what we do. We work with them on an individual basis.

I think the law—and DOT and the way the cars are brought into this country—when it gets enforced and everybody does what he is supposed to do is not a problem. I think the problem is lying by not saying directly, "We do not want you to import any cars and we do not want you to do anything on the cars except what is done by the factory."

Why say only the manufacturer can dictate what we get in this country and what can be brought into this country? Why can't the people go over to Europe and buy themselves a car for $10,000 less than the identical model automobile and bring it over here, and then spend the $7,000 to $8,000 that people spend on modifying this automobile so that it comes up to American standards?

The work is done right and it has the same standards, and it is done on an individual basis. I think it is done with a lot of craftsmanship by our people who are working with me. I do not think the solution is to abolish the industry. I think it needs somebody to govern it right, and I think somebody has to control what is going on.

When I came to this country 15 years ago, I worked for a company. I worked as a technician. I was not perfect in the way that business is done. I worked for a dealer and 6 months later I spent 3 weeks in court going against the service manager there because they cheated people. They lied to people and they did stuff that was not fair. And they were authorized dealers that did this.

I think we've just got into this, and I think this industry has just developed like a mushroom with these imports and it should be controlled. But I think it should not be wiped out.

I just started my business 1 year ago and we have now five or six other people working with me, and we service, repair, and modify cars. I think when the law that we have on the books gets enforced and gets monitored right, there will be no need to abolish our industry. And I think there are a lot of people who would like to go ahead and make their own decisions—to choose what kind of car they get and what equipment they would like to have on the automobiles.

The imported cars from Europe are built with a lot of concern for safety over there. The cars are generally well built, and the difference between an American model and a European model is not quite as drastic as it was presented here. I think the individual items actually get modified and done right. In Germany the cars are built with a lot of concern for safety and with crash worthiness in mind.

I just feel like we are getting run over by a big foreign giant who says, "We do not want this. I do not want anybody to sell any cars in this country except us."

I know from my own experience that the dollar in the last 7 years has increased by 50, 75, 80 percent on Germany, compared to Germany. I do not see the Mercedes, BMW, Porsche, every car from Germany—and Jaguar included—going down 60 or 70 or 80 percent, or even staying at the same price level. They have gone up every year. Something is not right there in my calculations. And I do not think it is fair that we get told, "You are out of business. We do not want you to do anything."

I do not feel that this is the right thing to do. That is not what I enjoy in this country. I think everyone should have rights to a business.

[The statement follows:]

STATEMENT OF LOTHAR SCHUETTLER, PRESIDENT OF EXCLUSERVICE, INC., ROCKVILLE, MD

Mr. Chairman and Honorable members of the committee, I am privileged to appear before this committee today to express the concern that legislative action now proposed in the Congress would eliminate a dynamic American industry of which I am a part. I am here representing about 800 small businesses—most employing under 10 people—which are involved in the importation, modification, testing and repair of European automobiles directly imported into the United States by entrepreneurs instead of through the international corporate structures of the European auto manufacturers. I would like to inform the committee that our industry is serving the American consumers' widely expressed desire for a greater degree of choice in automobile purchases and more competition in pricing than is currently being offered then by the European companies and their subsidiaries.

Our industry—which has been developing rapidly in response to this growth of consumer demand—is providing many American jobs, especially in the work of modifying the directly-imported vehicles to meet U.S. Federal safety and environmental standards. The rigorous federal guidelines, procedures and testing have attracted many high-quality mechanics and technicians to what has become one of the more vibrant and progressive sectors in the U.S. auto industry. Small business owners, such as myself, have found that they are able to attract the most able and upwardly-mobile mechanics to our shops because of the quality of the cars we work on, the high standards required in the work, and the small business environment which they prefer over the large dealerships.

I would also like to address the questions which have been raised about the additional safety equipment and modifications required to conform directly imported vehicles to U.S. standards. First, the European cars are built with very high priority given to safety and crashworthiness. Secondly, what modifications are required are not significant to the basic structure of the cars. These include adding strengthening posts to the doors, extra steel to reinforce the bumpers, modifying and installing various electrical and warning devices, checking seat belts and other safety features, and adding extra lights to the sides of the car. The modifications are relatively simple to accomplish and all the parts are readily available in abundant supply. The rigorous testing and reporting required by the U.S. Department of Transportation insures that care is used. More importantly, however, our own standards as a new industry cause us to take special care in the modification work on direct imports.

In conclusion, efforts to eliminate the American direct imports industry by the foreign automobile conglomerates solely because they engender price and choice competition seem to go against the very grain of the American free entreprise system. Our industry trusts that you will support us in attempting to strengthen this system instead of allowing narrow foreign interests to subvert it by eliminating us through legislation.

I would be happy to answer any questions you may have.

Thank you.

[The following information was subsequently received for the record:]

QUESTIONS OF THE CHAIRMAN AND THE ANSWERS THERETO

Questions. Automobile dealers have expressed concern about the assumption of liability when they attempt to service and repair "gray market" vehicles. Do you believe this is a problem?

Answer. No. An automobile dealer or service shop may simply disclose to any customer bringing in a directly imported and conformed vehicle that the retrofit equipment is not guaranteed by it and disclaim liability on the work order. Should any retrofit system or equipment be obviously faulty to any dealer or shop upon inspection, it may require the customer to sign a waiver of responsibility on its part before service and it may also disclaim responsibility and liability for the defective part or system, and any consequences therefrom, on the bill. An example would be if I saw a faulty Midas muffler system on a BMW I was asked to do brake work on. I would inform the customer, give him the option of repairing the system properly at our shop, and, if the customer declined, I would disclaim any responsbility for that muffler system and any problems relating to it on the customer's bill.

Questions. We have heard testimony about results of a National Automobile Dealers Association survey which shows that many "gray market" cars do not meet all U.S. safety and emissions standards. What is your response to this claim? In your view, to what extent is there a "gray market" problem?

Answer. The claim has little credibility on its face given the survey's interested source, Mercedes Benz of North America dealerships. A recent analysis of the study by an automobile import and highway safety consultant, Michael J. Grossman, also reveals that the NADA's claim that over 99% of the Mercedes Benz vehicles surveyed lacked legally required safety equipment is greatly exaggerated. He also points out that the survey was not conducted on a scientific or a fair and reasonable basis. A copy of Mr. Grossman's analysis is appended as Attachment A.[1]

There is, however, definitely a problem in the direct automobile imports (so-called "gray market") industry. There are some incompetent and dishonest people doing improper conversion work. Probably about the same percentage of "problem" people as in any new industry. The problem, however, would be fairly easily remedied by strict enforcement—indeed, reasonable enforcement—of the existing laws by those federal government departments and agencies charged with enforcing the laws and regulations. If, hypothetically, the Mercedes Benz survey were correct, that would indicate to a normal reasonable person that EPA and NHTSA were not even looking at the voluminous documentation that they require for federal certification of the retrofitting of directly imported vehicles. I am appending as Attachment B an outline of the federalization process required by the U.S. Government accompanied by a time frame matrix and copies of the actual documents and forms submitted (with the names and VIN numbers obliterated). After one sees how onerous and detailed this procedure is, it is difficult to understand how the U.S. Government would be able to permit evasion of the laws on a large scale unless it were not looking at the materials at all or EPA was not spot-checking on any of the laboratories it has sanctioned for testing of emissions control systems.

Additional legislation might be contemplated to assist the industry in ridding itself of the elements which are seriously affecting its otherwise good reputation. Such legislation could include a federal registration program for all direct imports retrofittng establishments; standardization of DOT/NHTSA and EPA documentation requirements and shorting of approval times; documentation, disclosure and labeling requirements for federalized automobiles; and an excise tax of $200 collected from the importer of record upon entry to fully fund a vigorous administration and enforcement of the laws, including a spot inspection program.

The alternative to strengthening the direct automobile imports industry—which Americans have indicated by its present vitallty to be in their best economic and personal choice interests—is to needlessly deny a large number of honest businessmen, enterpreneurs, workers and customers the protection and benefits of the American Free Enterprise System upon which the greatness of this country was built.

The CHAIRMAN. Do you think that the legislation would basically be to protect the American dealers of foreign cars, but that it would not have any particular safety effect?

Mr. SCHUETTLER. I think we should go ahead and enforce the safety laws, but the people who do the work should be controlled. There are some bad people out there that do bad work on these cars, but there are loopholes and the laws are not enforced.

The CHAIRMAN. But the broomhandle in the door and the catalytic converter——

Mr. SCHUETTLER. That is exactly what I am saying. Those people are doing a job and they are not doing it right. Is this a reason why everyone else has to say we cannot do business? We have a lot of drunken driving on the street, but nobody takes my license away and says, "You cannot go on the street any more because we have too many drunken drivers."

The CHAIRMAN. What do you say to that, Mr. McElwaine?

Mr. MCELWAINE. Well, I think Mr. Schuettler makes a very eloquent witness, I have to say. But he also very brilliantly illuminates the problem that is created by the present application of the law.

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[1] The attachment is in the Committee files.

We create two classes of individuals under the law: One group of corporations and individuals who are required to conform to the letter of the law, to test their vehicles, endurance testing up to 50,000 miles, to crash test their vehicles, to certify under penalty of the law that their vehicles comply with U.S. standards; and another class of people who are not required to meet the same standards, who may simply make a few modifications and, as the record has shown, in the vast majority of cases fail to make those modifications properly, and are able to enter their product into U.S. commerce.

The CHAIRMAN. You say in the vast majority of the cases they do not make the modifications properly?

Mr. MCELWAINE. 97 percent of these cases, these cars do not comply with U.S. standards. Now, Mr. Schuettler's cars may do very well, but he is in a very decided minority.

The CHAIRMAN. Where did you get the 97-percent figure?

Mr. MCELWAINE. From 925 studies made through Mercedes-Benz dealers of grey market cars brought into their dealerships for service, and these cars have been inspected and analyzed, and 97 percent of them do not comply with the U.S. standards, either do not have required equipment on them or have them installed in such a manner that they are not effective.

The CHAIRMAN. Is that credible evidence, do you think?

Mr. MCELWAINE. When one compares it with additional supporting evidence, such as the NADA's study which showed 99 percent failing to comply, the California Air Resources Board study showing 75 percent failing to comply, obviously the vast majority of these cars are not meeting U.S. standards.

The CHAIRMAN. Do you agree with this, Mr. Benjamin Jackson? A 97-percent noncompliance?

Mr. BENJAMIN JACKSON. I have not seen these studies that Mr. McElwaine refers to, and obviously they were not conducted by an uninterested third party, but that is not to suggest that they are not correct.

We do not claim and I have not said that there are not problems with the direct import business. I am not here to try to convince you of that. I think that there are problems, but those problems can be addressed and they can be solved. And there are instances where people do try, and they try very hard, and I think they are successful, in making these cars meet U.S. safety and emissions standards.

But I am not suggesting the process is perfect. I am suggesting that there is an enormous price differential that exists between these cars, that is not reflected in the requirements of this Government for imported cars. There is an enormous amount of profit being taken, and that is why this market exists.

The CHAIRMAN. I take it the position of the administration as of a few days ago is that the more foreign cars we can get into our country, the better we like it. At least that is, I take it, the administration's view: open the floodgates, let them all in.

If we are going to let them all in, why not just let them all in, broom handles and all? I mean, that sounds facetious, but if we are going to say, well, the American market is open, why not just let 'er rip?

Mr. BENJAMIN JACKSON. We certainly do not advocate that, sir.

The CHAIRMAN. Why not?

Mr. BENJAMIN JACKSON. Because I think there is a valid need for the safety requirements of this Government.

The CHAIRMAN. But I mean, if it is 97 percent or 3 percent, just let them all in. Is that not reasonable?

Mr. BENJAMIN JACKSON. I do not think so. I feel like they all ought to meet the standards.

The CHAIRMAN. I agree. I mean, I think obviously you are right, but that was just a little pique at the present view of the administration on another subject.

Mr. BENJAMIN JACKSON. I cannot speak for the administration, sir. I can speak for myself. I spent a good part of my life enforcing the environmental laws of this country and I have too much respect for them to suggest that they are not important.

The CHAIRMAN. Sure. The issue really is, is that 97 percent noncompliance or is it very good compliance? I mean, that really should be the issue, though, should it not? In other words, the question on whether or not some new legislative measure or regulatory measure is required should not be made on the basis of what is good for business of the dealers, but rather it is purely a safety issue, is it not?

Mr. BENJAMIN JACKSON. Yes, sir.

The CHAIRMAN. If the rule is that there is 97 percent noncompliance and that there are broom handles in doors, that is one thing. If, on the other hand, every car comes out that Mr. Schuettler has been working on and it is as good as anything that can be bought at Euro-Motors, that would be quite another situation, would it not?

Mr. HORVATH. Senator, I would like to make a comment, a brief comment. The real issue here is what the purchaser of a grey market car thinks they are getting and what they are actually getting.

With regard to the price differential of these vehicles, there are many amenities that are not in the European models. In Europe they have many of these vehicles that are in taxicab services. Their upholstery, their trim, things that we have not even addressed here as far as compliance to the code——

The CHAIRMAN. But I mean, that is not our business, is it? We are not in the trim or upholstery business. We are not going to put out regulations saying that you have to have leather seats.

Mr. HORVATH. You are in that business, because the fire code that was established by our Government says it must have a fire-resistant material. So we are in the trim business as far as regulations are concerned, and that was already established.

And many of these vehicles do not comply with many of these factors that have not even been covered here right now.

The CHAIRMAN. In other words, the issue that we have to look at—and I do not know what the answer is, but the issue really is one of safety. It is not one of trim, it is not one of preference, it is not one of whether it makes the dealers happy. Obviously it does not. You know, nobody wants competition $14,000 less per car than you are selling them at your dealership.

Mr. HORVATH. Different vehicles.

The CHAIRMAN. Gentlemen, thank you very much for your testimony. I appreciate it.

[Whereupon, at 12:30 p.m., the subcommittee was adjourned.]

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

AMERICAN AUTOMOBILE ASSOCIATION,
Falls Church, VA, February 20, 1985.

Hon. JOHN C. DANFORTH,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The American Automobile Association, with more than 25 million members, strongly supports your position in favor of returning to a 5 mile per hour, no-damage bumper standard.

AAA believes the current 2.5 mph bumper standard is inadequate and costly to motorists. We urge Congress to set the record straight by advising the National Highway Traffic Safety Administration (NHTSA) that it has failed to carry out the express intent of the Motor Vehicle Information and Cost Savings Act—"to obtain the maximum feasible reduction of costs to the public and to the consumer,"—and by directing the agency to reinstate the bumper standard in effect on January 1, 1982.

The recent decision of the U.S. Court of Appeals upholding the 1982 rollback of the bumper standard should not end this matter. The court in that case merely concluded the NHTSA's action was "reasonable" given the sketchy evidence available to the agency at the time of its analysis.

The cost/benefit ratio of any particular bumper standard may have been difficult to pin down in 1982, but in 1985 the facts are in. Predictions of jumps in the frequency of insurance claims, higher premium costs, and bigger repair bills have all come true; but we have yet to see the promised benefits of substantial fuel savings and auto price reductions.

Also of importance to members of AAA is the value of lost time and the inconvenience involved in the assessment and repair of low-speed collision damage (cost of alternate transportation, time lost from work, and in obtaining repair estimates). NHTSA originally assigned a figure of $26 to $50 to the value of lost from work, and in obtaining repair estimates). NHTSA originally assigned a figure of $26 to $50 to the value of lost time and inconvenience.

In contrast, a poll conducted by Opinion Research Corporation placed a value of $150 to $200 per incident for inconvenience. On a related issue, a later poll conducted by Opinion Research indicated that 64 percent of the public would be willing to pay an extra $100 for stronger bumper protection, even though the extra price to the manufacturer was only $40. Nonetheless, NHTSA rejected the results of these polls as irrelevant to its mandate to arrive at a cost-efficient standard. In our view, however, such polls are directly relevant in establishing the proper cost/benefit relationship.

Crash tests conducted by the Insurance Institute for Highway Safety clearly demonstrate the superiority of 5 mph bumper systems in preventing costly damage. Of 1984 models tested, automobiles with 2.5 mph bumpers sustained $149 to $487 damage in 5 mph front- and rear-into-barrier crashes, yet comparable vehicles with 5 mph bumpers resisted all damage in the same tests.

The frequency of crashes in this range can be demonstrated by looking at the jump in the number of claims for model year 1983 automobiles over those of model year 1982 of the same make. For example, Honda 2-door Accord claims rose 29 percent, Chrysler 2-door LeBaron claims were up 17 percent, and Volvo 2-door 240 claims increased by 21 percent.

Auto insurance rate increases have also exceeded NHTSA's 1982 estimates. The agency projected that auto insurance rates relating to property losses would be raised at an average rate of 10 percent, ignoring the 10 to 20 percent estimate offered by the National Association of Independent Insurers. The higher range of increases was based upon the immediate loss of discounts applying to cars with 5 mph, no-damage bumpers. NHTSA based its use of the lower number on the theory that such discounts would not be completely dropped to pre-standard levels but should reflect some level of protection afforded by 2.5 mile per hour bumpers.

Nevertheless, one insurer, GEICO, advises that in the nine states in which it had offered such a discount, its insurance rates went up immediately by 11 percent and may be raised even more as industry loss experiences are assessed. Weaker bumpers have lead Allstate Insurance to raise premiums on the Chevrolet Camaro and the Pontiac Firebird as much as 30 to 50 percent over base rates.

We now know that NHTSA overestimated the savings that would accrue to the motorist under a weaker bumper standard. One of NHTSA's oft-quoted premises for justifying the rollback was the assumption that manufacturers would "as a result of competition" pass along to consumers their savings in bumper production costs. Such savings were expected to result from removal of costly energy absorbers and from the use of "less material," a corollary of NHTSA's theory that manufacturers would produce lighter bumpers. Consumer savings have not occurred, however. For example, prices of the 1983 models of the Plymouth Horizon, the Plymouth Reliant, the Dodge Omni, and the Dodge Aries with 2.5 mph bumpers and with 5 mph bumpers were the same.

Moreover, manufacturers are not installing significantly lighter bumpers than those in accord with the 5 mph standard. NHTSA estimated that 2.5 mph bumpers would weigh between 15 and 33 pounds less per car, resulting in substantial fuel savings over the life of the car (one gallon per pound of weight removed over the lifetime of a car). Actual weight reductions have been estimated at between 2 and 6 pounds, producing an average fuel savings of only 2 to 6 gallons for the life of the car. The apparent failure to achieve weight reduction may be due to the use of heavier materials by manufacturers. This is in line with NHTSA's own observation that heavy materials are cheaper than light materials.

AAA is aware that several auto makers are returning to 5 mph Phase I bumpers for new model years. Unfortunately, this does not go far enough in restoring bumper protection. New car buyers may be disappointed when they find that Phase I bumpers protect only auto body parts and that the bumpers themselves sustain damage in low-speed collisions. The costs to the consumer in lost time and inconvenience generally remain the same, whether only the bumper is being replaced or more extensive repairs are made. Consumers will end up paying almost as much out-of-pocket cash for such repairs as with a 2.5 mph standard because bumper replacement bills will fall within the range of most insurance deductibles. Finally, the extra protection afforded by a 5 mph, no-damage bumper in crashes at sgreater speeds will not be regained.

In light of the compelling evidence demonstrating the savings of the 5 mph, no-damage bumper standard, AAA urges Congress to reinstate the stronger standard.

Thank you for the opportunity to express our views on this subject. We would appreciate having our comments made part of the record of the Committee's February 21 oversight hearing.

Sincerely,

JOHN ARCHER,
Managing Director, Government Affairs.

AMERICAN ASSOCIATION OF MOTOR VEHICLE ADMINISTRATORS,
Washington, DC, March 13, 1985.

Hon. JOHN C. DANFORTH,
Chairman, Subcommittee on Surface Transportation,
Hart Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The American Association of Motor Vehicle Administrators (AAMVA) is pleased to have the opportunity to submit a statement for the record of the hearing before the Commerce Committee of February 21, 1985.

The problem of odometer fraud has become a matter of increasing national concern. Our Association believes it is essential that means be found to protect consumers from odometer tampering. We know you would agree, however, that whatever means are developed to deal with this problem, they must be workable and effective.

From our perspective, the best way to assure that this does happen is through a cooperative effort, of interested parties, to develop solutions which are workable and cost effective. A broad based group of diverse interests has formed the Odometer Tampering Elimination Committee (OTEC) to do exactly that. Represented are: The AAMVA, the American Car Rental Association, the Automotive Fleet and Leasing Association, Chrysler Corporation, Ford Motor Company, General Motors Corporation, International Association of Auto Theft Investigators, Motor Vehicle Manufacturers Association, National Auto Auction Association, National Association of Fleet

Administrators, National Highway Traffic Safety Administration, National Independent Automobile Dealers Association, National Odometer Enforcement Association, and National Vehicle Leasing Association.

Although it has received little national attention, many states have already taken steps to combat odometer fraud. Based on a survey we recently conducted of our member jurisdictions, all U.S. states, territories, the District of Columbia, and all Canadian provinces and territories, it appears that by 1986 all but two or three states will require the odometer reading on title documents. We are pleased to see this progress, and have strongly urged states to take this step. It is our position that all states should include the odometer reading on title documents at the time of transfer.

At the same time, we cannot support the inclusion of odometer readings in state motor vehicle registration records. Jurisdictions would need to capture and store the odometer reading from registration applications into approximately 110 million passenger car records nationwide.

Furthermore, in many states, registration renewal is accomplished by mail. Educating the public in need to include the odometer reading on the application and necessary follow-up to secure missing readings would be costly and time-consuming.

Perhaps most importantly, there is no evidence of which we are aware to suggest that the inclusion of odometer information in the registration process would have any positive effect on reducing odometer fraud. Presumably, in order for such a system to be meaningful, someone would need to audit and analyze registration records on a year-to-year basis, and compare the readings with those on titles involved in transfers. This, of course, would involve additional costs.

With respect to the "gray market" in automobile imports, the AAMVA applauds efforts to find a federal solution to this problem. Currently, federal law allows nonconfirming vehicles to be imported on the condition that they are subsequently modified to meet federal safety and emissions standards. While the purpose of this has been to allow individuals, such as returning servicemen, to bring into the country vehicles purchased overseas for personal use, it is apparent that many gray market dealers have taken advantage of this loophole to import thousands of nonconforming vehicles each year for the purpose of resale. It is evident that many of these vehicles are not made to conform before they are purchased by consumers; in addition, state motor vehicle administrators are confronted with increasing numbers of title applications for vehicles which do not meet federal safety and emissions standards. Often, these applications are accompanied by bewildering array of foreign language documents which purport to show evidence of ownership, but which often do not show a clear chain of title.

Therefore, we view legislative efforts to close the gray market loophole as a very positive step. We are pleased, as well, that the most recent legislative proposals include the opportunity for exemptions, from the general prohibition against import of non-conforming vehicles, in cases of hardship or extraordinary circumstances.

Sincerely,

DONALD J. BARDELL,
Executive Director.

FORD MOTOR COMPANY,
Dearborn, MI, March 14, 1985.

Hon. JOHN C. DANFORTH,
Chairman, Committee on Commerce, Science, and Transportation,
U.S. Senate, Washington, DC.

DEAR SENATOR DANFORTH: At the February 21, 1985 hearing of your Committee to consider authorization of the NHTSA, two witnesses—Joan Claybrook and Clarence Ditlow—presented allegations concerning incidents of unexpected vehicle movement in 1970-1979 model Ford vehicles equipped with automatic transmissions. Because we did not know that these allegations would be raised before your Committee, we did not have the opportunity to present to your Committee the facts which we believe clearly demonstrate that unexpected movement of automatic transmission vehicles can occur with any make of vehicle—not because of a defect, but because of human error—and, on rare occasions, the results of this occurrence may be tragic.

When these assertions were last presented to a congressional committee, Mr. William T. Coleman, Jr., who accompanied me when I testified on these matters, submitted a comprehensive statement of Ford's position. We, therefore, respectfully request that Mr. Coleman's earlier statement be included in the official record of your

Committee's February 21 hearing. We do so because the safety of our cars and trucks is of a paramount concern to us, as is the reputation of our products; we cannot stand by and permit unfounded and, I must say, discredited allegations to be made without making this information available to you.

Sincerely,

H.O. PETRAUSKAS,
Vice President, Environmental and Safety Engineering.

Enclosure

O'MELVENY & MYERS,
Washington, DC, August 16, 1983.

Hon. TIMOTHY E. WIRTH,
Chairman, Subcommittee on Telecommunications, Consumer Protection, and Finance, U.S. House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: Your May 12, 1983 letter inviting Ford Motor Company representatives to appear at the Subcommittee's July 27, 1983 hearing ("the hearing") on Ford automatic transmissions stated that the hearing's purpose was "to receive any new information available since [Ford's Owner Reminder Program concerning unexpected vehicle movement] was implemented, on the effectiveness of this 'remedy,' and to explore alternative ways to mitigate the risk of death and injury from these vehicles." However, several witnesses at the hearing deviated from this announced, forward-looking topic. In particular, auto industry critics "Joan" Claybrook and Clarence Ditlow dedicated most of their prepared statements to reiterating in detail and at great length the same allegations they made back in 1980 regarding the automatic transmissions on 1970-1979 Ford vehicles. They did so as though these allegations and the supposed "evidence" in support thereof had not been roundly discredited, not only by information provided to the National Highway Traffic Safety Administration ("NHTSA") by Ford, but also by agency-sponsored testing done during Ms. Claybrook's tenure as NHTSA Administrator. Further, as is discussed at the conclusion of this letter, both Ms. Claybrook and Mr. Ditlow failed to mention that these same arguments and evidence failed to persuade two federal courts of the existence of the purportedly self-evident Ford transmission defects.

With these factors in mind and pursuant to the permission you granted at the hearing, I respectfully request that this letter and he exhibits attached hereto be included in the official record of the hearing so that the record before the Subcommittee on this subject will be more complete and accurate.[1]

Obviously, it is impracticable here to rebut each of the unfounded assertions made at the hearing, but I would like to respond on several points.

THE PHENOMENON

George Morris performed a great service to the public at the hearing by trying to put the proceeding into proper perspective. After sitting through lengthy anti-Ford rhetoric, Mr. Morris stepped forward to state a clarifying, simple truth: If a driver shifts any automatic transmission-equipped vehicle—Ford or non-Ford—fully into park, it will not come out.

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[1] Several of the attached exhibits, which are referenced in the discussion below, are Food submissions to NHTSA commenting on a broad range of issues regarding Ford transmissions. Because of their significance, a brief identification of these documents is probably appropriate:

(1) At the time of the initial defect determination, NHTSA summarized its preliminary findings in a document entitled "Phase I Investigative Report," prepared by its Office of Defects Investigation ("ODI Report"). A copy of this report was submitted for the Subcommittee record with Ms. Claybrook's prepared statement. The ODI Report provided Ford in June 1980 with its first glimpse of the agency's defect theories and of much of the "evidence" that ostensibly supported the initial determination. Exhibit 1, a July 7, 1980 document entitled "Preliminary Comments of Ford Motor Company on ODI Investigative Report," was Ford's first response to the allegations in the ODI Report.

(2) Pursuant to 15 U.S.C. § 1412(a), the agency held a three-day public meeting in August 1980 to give Ford "an opportunity to present data, views, and arguments to establish that" there was no defect in Ford automatic transmissions. Transcripts of testimony by Ford representatives at that meeting are referenced throughout this letter as Document Nos. C8-02-E129 through C8-02-E129.4 and are publicly available at NHTSA. Exhibits 2, 3 and 4 were prepared for and submitted to the agency at that meeting.

(3) In response to the Ford "Preliminary Comments" memorandum (Exhibit 1) referenced above, NHTSA publicly distributed at the August 1980 public meeting an "Analysis of [Ford's] Statistical and Technical Arguments." A copy was submitted for the Subcommittee's record with Ms. Claybrook's prepared statement. Ford received this "Analysis" too late to permit a detailed response at the public meeting, but on September 18, 1980, it submitted a critique entitled "Reply of Ford Motor Company to ODI Staff Analysis of Ford's Preliminary Comments," which is attached as Exhibit 5.

Mr. Morris' testimony made clear that the issue is not the sensationalized claim that cars "jump out of park." Rather, the issue has to do with inadequate driver interaction with motor vehicles—i.e., drivers who fail to place their shift selector levers (gearshifts) into park and who, in some cases, compound this error by leaving their running vehicles unattended and by failing to engage their parking brakes. Nonetheless, the "jump out of park" fiction persists in the press and other public commentary.

The person primarily responsible for publicizing the "jump out of park" allegations—former NHTSA Administrator Joan Claybrook—still steadfastly maintains that Ford vehicles can move into reverse even though the shift selector is placed in park.[2] (Claybrook, p. 11.[3]) However, on this issue, Ms. Claybrook stands virtually alone. Even other critics of Ford transmissions now acknowledge that it is physically impossible for a Ford or any other vehicle of which Ford is aware to "jump" from park to reverse unless a component of the control system is broken or the control system is grossly maladjusted. When a shift selector lever on a Ford or any other vehicle equipped with an automatic transmission is placed in park, the selector lever tang inside the steering column is inserted in a notch in the steering column detent plate and latched there. (See the illustration attached as Exhibit 6.) The lever cannot be shifted out of park unless the shift knob is lifted toward the steering wheel to disengage the latch. Unless this lifting action is made by the driver (or in the case of floor-mounted shifts, a button is pushed), a shift lever properly placed in park cannot come out.

Acceptance of these facts is virtually universal:

The Canadian Ministry of Transport conducted an investigation of Ford automatic transmissions parallel to NHTSA's, and its principal investigating contractor concluded: "It is not believed that a vehicle in proper mechanical condition would jump from Park to Reverse after being properly placed in Park. It appears that in almost all reported incidences, the transmission was not fully shifted into Park. * * *" (Document No. C8-02-406.1, p. 10.)

In a tort suit involving alleged defects in Ford transmissions, a judge observed that the case was "not about a vehicle that 'jumps' out of park into reverse. Every expert witness including plaintiff's expert agrees that when the transmission is in park it will not come out." *Bartholomew* v. *Ford Motor Company*, No. 43347, memo., at 2 (Va. 19th Judicial Cir., March 4, 1980).

Even Dr. Melvin Richardson, who frequently testifies against Ford in suits alleging transmission defects and who testified at the hearing, has given testimony repudiating Ms. Claybrook's position. In a deposition for a tort suit against Ford, Dr. Richardson agreed with the statement that "if [a] driver shifts [a] vehicle into park, it will stay that way;" i.e., "the transmission will not self-shift from park to reverse." (See transcript excerpt attached as Exhibit 7.) On at least two other occasions, Dr. Richardson has given similar testimony. (Id.)

Again, even one of the "experts" cited by NHTSA during its investigation, Dr. James Somerset, has written in a publication: "When the driver rotates the shift lever to its maximum counterclockwise position, the shift lever drops into a slot in the shift gate, and will not move clockwise or counterclockwise until it is lifted again, parallel to the steering column. With the lever thus in the slot in the shift gate, an additional constraint is imposed upon the shift mechanism of the transmission. The push rod spring is incapable of pushing the detent cam from Park to Reverse if the selector lever has entered the slot in the gate." (Document No. C8-02-A112, p. 39-24.[4])

A report prepared by NHTSA's own test facility concluded that "[w]hen the shift selector was in the park position, no amount of door slamming, vehicle bouncing, or steering wheel shock, caused the gear selector to jump into reverse." (Document No. C8-02-A26, p. 21.)

Finally, NHTSA's own Parts Return Program News (April 1979 edition) reported, on the basis of field inspections of Ford vehicles allegedly involved in unexpected vehicle movement incidents, that "when placed securely in Park, the vehicles would not accidentally shift into Reverse."

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[2] For example, on June 12, 1980, then-NHTSA Administrator Claybrook stated on nationwide television that Ford transmissions "slip from park into reverse unexpectedly," and that even though the transmission "is properly put into park, it comes out."

[3] "Claybrook" refers to Ms. Claybrook's prepared statement for the hearing.

[4] This and similar subsequent citations are references to documents in NHTSA's official files on ODI Case C8-02 and related petitions. In many instances, documents so cited have not been included as exhibits to this letter, but they are publicly available through NHTSA's Technical Reference Library.

In sum, Ms. Claybrook's assertion notwithstanding, it must be understood that the phenomenon at issue here can occur only if a driver fails to take commonsense precautions in parking an automatic transmission-equipped vehicle:

(1) making sure the gear selector lever is engaged in Park,

(2) setting the parking brake fully,

(3) turning off the engine.

These precautions are nothing new: they are reflected in the laws of almost every state,[5] are taught in drivers' education classes, and appear in every major U.S. manufacturer's written instructions to car and light truck drivers.

THE "FORD-ONLY" PHENOMENON

The clear import of the prepared testimony of Mr. Clarence Ditlow of the Center for Auto Safety ("CFAS") is that unexpected vehicle movement is a phenomenon peculiar to Ford vehicles. (See Ditlow, p. 2.[6] Nothing could be further from the truth.

The intense publicity about unexpected vehicle movement incidents has, as will be discussed below, been aimed exclusively at Ford transmissions. This media barrage combined with the widespread public solicitation of complaints about Ford transmissions has presumably resulted in a fairly complete reporting of alleged incidents involving Ford vehicles. But the reporting of comparable non-Ford incidents has been fragmentary and limited. For example, only several weeks ago, a 61-year old Washington, D.C. woman was fatally injured in Prince Georges County, Maryland when, after a minor accident, she left her 1979 Buick unattended and it began moving rearward. According to the police report (attached as Exhibit 8), the woman "attempted to run alongside" her vehicle, but was either "struck by or run over by the vehicle." Local newspapers barely mentioned this unfortunate incident and certainly did not suggest that a vehicle defect was involved. See the Washington Post, July 25, 1983, at B5, Col. 2. Meanwhile, comparable occurrences involving Ford vehicles are characterized in banner headlines as manifestations of defects and are otherwise brought to NHTSA's and to the public's attention by Ford critics. (See, e.g., Ditlow, p. 2.)

Despite this imbalance in reporting, however, NHTSA's files now contain a total of at least 163 reports of fatalities apparently resulting from the unexpected movement of 1970-1979 model non-Ford vehicles equipped with automatic transmissions. (See, e.g., Document Nos. C8-02-390.1, -413.1 (p. 15), -1.456, -1.487, -1.536ss, P81-020-6.[7] The circumstances of these accidents are factually indistinguishable from accidents involving Ford vehicles that have been the basis of widely-publicized and inflammatory allegations against Ford-built automatic transmissions by CFAS and others. For example:

A 1974 Pontiac struck and killed a 64-year old woman in Tennessee. Reportedly, the "[v]ictim was getting mail from [a] mailbox when [her] car fell out of gear and rolled down [a] driveway. It is believed [the decedent] tried to stop the car and was run over."[8]

In New York, a 58-year old woman was fatally injured when she was struck by her 1972 AMC sedan. The decedent "apparently [had] stopped backing [her vehicle], got out of [the] car to move garbage out of the way." The vehicle "either jumped out of park or was left in reverse [,the] car backed into" the decedent.

A 77-year old man was killed in Kentucky when his 1974 Chrysler "parked in [a] driveway * * * with the motor running, went into gear causing the vehicle to roll backward," striking the decedent.

A 70-year old woman was killed in Connecticut when she was struck by her 1979 Chevrolet. The decedent reportedly had left the vehicle unattended when it began rolling backward and "came in contact with the victim, * * * who had exited" the vehicle.

In Ohio, a 47-year old woman was fatally injured when she was struck by a 1973 Buick. The decedent apparently stopped her vehicle on a road and got out to ask directions. The decedent then "started to chase her vehicle which was backing in a circle. The [decedent] ran behind [her vehicle] slipped and fell and was" struck.[9]

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[5] See NHTSA, "Traffic Laws Ann." 295-97 (1979).

[6] "Ditlow" refers to Mr. Ditlow's prepared statement for the hearing.

[7] Copies of some of these materials are attached hereto as Exhibit 9. In addition, see my letters to NHTSA dated June 8, 1982 and May 4, 1983 (also attached in Exhibit 9).

[8] Quotations in this and the following examples are from police reports. Copies of those reports are on file at NHTSA.

These five regrettable reports of fatalities involving 1970-1979 non-Ford vehicles—and the at least 158 others in NHTSA's files—are mentioned purely to counter the fallacious charge that such accidents occur only with Ford vehicles. The performance of automatic transmissions cannot validly be judged by examining the numbers of complaints of alleged unexpected vehicle movement accidents. Such an approach is premised on the wholly unjustified assumption that unexpected vehicle movement accidents are attributable to a vehicle defect when in reality, as discussed above, such incidents occur when drivers fail to observe simple safe-parking procedures. Ford does not suggest that any of these incidents demonstrate the existence of a defect in the vehicle involved. Nor does Ford suggest that the hearsay evidence in police reports or other accounts regarding these alleged occurrences necessarily establishes without further inquiry what really happened in a given case.

Nevertheless, these reports add further support to the already well-documented proposition that while such incidents occur very rarely, they do occur in all makes of vehicles. The reports also amply justify the Canadian government's conclusion (in an investigation of Ford transmissions parallel to NHTSA's) that no defect was apparent and its laudable public pronouncement that drivers of all automatic transmission-equipped vehicles should take precautions against unexpected vehicle movement. (See the Canadian Ministry of Transport news release attached as Exhibit 10.)[10]

"23,000 COMPLAINTS"

Ms. Claybrook's prepared statement asserted that "[b]y the time of the initial determination in June 1980, the agency had received more than 23,000 complaints." (Claybrook, p. 12.) What Ms. Claybrook failed to mention is that the vast majority of these complaints had no relevancy whatsoever to the phenomenon of unexpected rearward vehicle movement, the stated purpose of the agency's investigation. These complaints appeared to be a potpourri of any and all transmission-related complaints—ranging from odd noises to fluid leaks—received by NHTSA during the pendency of the investigation.

NHTSA spent thousands of dollars having an outside contractor—Control Data Corporation—examine each consumer complaint, encode information from each complaint into a computer data base, and perform analyses of the complaint data. NHTSA derived its "23,000 failure" figure from this data base. (Claybrook, p. 12.)[11]

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[9] In its prepared statement for the hearing, a representative of the American Association of Retired Persons asserted that persons over age 50 were disproportionately represented among those fatally injured in unexpected movement accidents involving Ford vehicles. The foregoing list and the record at NHTSA indicate that a similar demographic pattern exists as to such accidents involving non-Ford vehicles.

[10] During the hearing, the verifiability of reports of non-Ford fatality accidents on the record at NHTSA was questioned because some had been submitted by Ford in the form of police reports on which information identifying the decedent had been masked. It was suggested that due to this masking, the reports could not be confirmed by NHTSA or by the Subcommittee staff. The fact is that Ford deleted certain identifying information in these materials in the interest of the privacy of the persons involved and because of commitments to certain local officials from whom records were obtained. Ford so stated to NHTSA and offered to make unexpurgated copies available for inspection off the public record. (See page 7 of my May 4, 1983 letter to NHTSA which is included in Exhibit 9.)

In the event that there is any remaining doubt about the authenticity of these police reports on non-Ford accidents, Exhibit 11 contains representative unexpurgated newspaper articles about some of these accidents with the make of vehicle noted for each accident where such information does not appear in the article. Unexpurgated police reports on the accidents discussed in these articles as well as several other accidents are being supplied to the Subcommittee staff under separate cover. No privacy commitments exist as to these materials.

[11] Ms. Claybrook's suggestion that the agency received "23,000 complaints" is misleading because it suggests that the agency heard from owners of 23,000 vehicles. In reality, the agency received complaints about far fewer vehicles. (See Document No. C8-02-413.1, p. 15.) Some consumers alleged multiple and often distinct transmission problems with their vehicles (e.g., noises, leaks). Hence, Control Data Corporation computed that there had been reports of 23,000 alleged transmission "failures" (see Document No. C8-02-413.1, p. 15), not that there were reports from that many vehicle owners.

Further, it should be noted that in a sworn affidavit, the person who was in charge of NHTSA's investigation, then-Associate Administrator for Enforcement Lynn L. Bradford, indicated that these "failure" reports were largely "unverified." (See Exhibit 12, ¶ 17.)

Using the analysis of the agency's outside contractor and applying NHTSA's—not Ford's—expressly stated definition of the "failure" phenomenon under investigation (see Document No. C8-02-413.1, p. 9), Ford discovered that most of the 23,000 complaints were irrevelant. For example, Ford discovered that 500 of the 23,000 "failures" were derived from the single letter of one consumer who claimed that on 500 occasions, he had problems with the transmission on his 1971 Ford LTD Sedan. These problems had nothing to do with unexpected vehicle movement, but rather involved "trouble [with] getting the car to move in reverse after it had been run a while." In short, this consumer's problem was not movement; it was non-movement. Nevertheless, all 500 of these so-called "failures" were counted in NHTSA's widely disseminated 23,000 figure.[12]

Further analyses of these complaints, including other instances like the 500 "failure" vehicle, were previously submitted to the agency. They are part of various exhibits attached hereto.[13]

EFFECTS OF PUBLICITY

Publicity about Ford automatic transmissions—perhaps the most intensive publicity ever about any alleged automotive defect—has had the effect of prompting the relatively complete reporting of unexpected vehicle movement incidents in Ford vehicles while leaving largely unreported the body of incidents involving non-Ford vehicles. Nevertheless, when Ms. Claybrook was NHTSA Administrator, she tended to dismiss the effect of such publicity on the number of complaints received by the agency. (See, e.g., Document No. C8-02-E129, p. 12)

According to her prepared statement, Ms. Claybrook now apparently concedes that "a significant amount of news comment" concerning Ford—and only Ford—vehicles did occur and that "media interest persisted." (Claybrook, p. 13.) Her new position, however, is that since NHTSA did not directly generate all the publicity, its effects should be ignored. This position is simply illogical. The source of the publicity is entirely irrelevant; the fact is that it did occur. The American public was barraged with allegations that Ford transmissions—and only Ford transmissions—were defective. Further, intensive campaigns seeking complaints about Ford vehicle—and only Ford vehicels—were mounted. Indeed, 41% of the complaints were produced by a heavily-publicized hotline sponsored by Ford which actively sought complaints only about Ford vehicles.[14] No comparable program to solicit complaints from owners of General Motors, Chrysler, or American Motors vehicles was even conducted. Thus, it is not surprising that this publicity and the accompanying Ford-only complaint solicitation efforts resulted in the accumulation of more complaints about Ford vehicles than about competitive makes.

Ms. Claybrook's underlying assertion that NHTSA did little more to generate publicity than distribute two pieces of paper—i.e., "two routine consumer advisories of the type the agency regularly issues in connection with defect investigations" (Claybrook, p. 13)—is inaccurate. Ms. Claybrook apparently has forgotten the unusually widespread newpaper coverage those advisories received [15] and the extent to which she successfully encouraged network television coverage of the agency's general efforts to solicit complaints about Ford—and only Ford—vehicles. For example, on August 28, 1978, Ms. Claybrook herself appeared on ABC-TV's World News Tonight and, speaking about Ford vehicles, stated: "I would like to learn from the public more about the problem. Whether it's as widespread as we begin to believe that it is or whether there are more examples of harm that has occurred than we realize." In addition, NHTSA supplied ABC News with at least one agency-owned Ford vehicle with a grossly maladjusted transmission for use in the "demonstration" by ABC reporter Jules Bergman. (See Document Nos. C8-02-214 (p. 8), -A57.) Ms Claybrook's statements also ignore the direct complaint solicitation programs financed by NHTSA—e.g., the Auto Club of Southern California Hotline[16] and the Connecticut Motor Club mail survey—that sought consumer complaints only from owners of Ford vehicles.

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[12] If it is correct that "a team of NHTSA engineers reread every letter with a jury system so that any letters of questionable meaning were discarded" (Claybrook, p. 12), the conclusions of those engineers directly contravene the analysis of the letters done by NHTSA's outside contractor. Notably, no documentation memorializing this claimed internal review appears in the agency's investigative file; there is only extensive documentation of the outside contractor's analysis.

[13] See Exhibit 1, pp. 5-15; Exhibit 5, pp. 4-14; Document No. C8-02-E129, pp. 67-88. In addition, see "Irrelevant or Incomplete Incident Reports Included in NHTSA's Data Base," a lengthy submission Ford made to NHTSA at the August 1980 public meeting. (Document No. C8-02-E129.6.)

[14] This hotline, a genuine effort by Ford to investigate the issues reponsibly, was designed to identify vehicles which had supposedly experienced unexpected vehicle movement incidents. Ford was then able to inspect complaint vehicles to determine whether there was any basis for NHTSA's concern, and none was found.

[15] Ford previously pointed out to the agency numerous representative news stories that ran in major newspapers in response to both NHTSA consumer advisories. (See Exhibit 5, pp. 16-17.) Many of these articles included NHTSA's pleas to consumers to submit complaints, but only complaints about Ford vehicles.

In her prepared statement, Ms. Claybrook also contended that:

"The unusual nature of the transmission defect often resulted in the agency receiving consumer complaints from owners of vehicles not mentioned in a particular public notice or news story. For example, the agency received as many complaints about Ford vehicles with transmissions not initially part of the investigation as it did about those which were." (Claybrook, p. 14.)

In making this statement, Ms. Claybrook ignored the fact that limitations on the scope of the agency's investigation in its early years were, predictably, omitted in news reports. For example, Jules Bergman's relatively detailed report on the August 28, 1978 edition of ABC's World News Tonight program mentioned that NHTSA was investigating 1971-1978 Ford vehicles, but gave no further specification of Ford vehicle type. On the CBS Evening News program the following night, Roger Mudd reported that Ford's C-6 and FMX transmissions were involved in an investigation, but did not identify which Ford vehicles were equipped with these transmissions. Obviously, few Ford owners would be aware of the type of transmission on their vehicles. Thus, contrary to Ms. Claybrook's contention, it is not at all surprising that complaints were received about all types of Ford vehicles inasmuch as the agency-produced solicitation message that reached consumers largely failed to distinguish among various Ford products.[17]

Finally, Ms. Claybrook also seeks to minimize the effect of publicity by noting that Ford had received consumer complaints about unexpected vehicle movement "six years before the agency opened its investigation. They could not have been influenced by any publicity." (Claybrook, p. 16.) Ms. Claybrook fails to mention that NHTSA's own files indicate that other manufacturers—General Motors, Chrysler and American Motors—also received complaints of unexpected vehicle movements in their automatic transmission-equipped vehicles before NHTSA opened its investigation. (See, e.g., Document Nos. C8-02-51, -57, -77, -184, -A43, -190.2, -A44, -190.3, -A44.1.) Moreover, NHTSA itself received complaints about non-Ford automatic transmissions prior to the initial publicity. Indeed, the agency has stated that it opened its case against Ford in October 1977 on the basis of two consumer complaints it had received about Ford vehicles and two it had been provided by CFAS. (Document No. C8-02-413.1, p. 1.) NHTSA later acknowledged, however, that at the time its investigation commenced, it had received comparable, if not larger numbers of such complaints about GM and Chrysler vehicles.[18] (Document Nos. C8-02-1.459, -1.536ee.) Thus, had NHTSA named any other manufacturers in connection with the publicity and complaint solicitation generated by the agency regarding Ford products, similar numbers of consumer complaints about those manufacturers' vehicles undoubtedly would have been received as well.[19]

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[16] Public awareness that this NHTSA-sponsored hotline concerned only Ford vehicles was created by the broadcast of a "radio solicitation" commercial 25 times in one week "on two of the larger Los Angeles AM radio stations" and by "many secondary media activities * * * e.g., radio/TV show interviews and newspaper articles." (Document No. C8-02-A35, p.4.)

[17] It is noteworthy that few, if any, unexpected vehicle movement complaints were received about Japanese-made vehicles—Datsuns and Mazdas—equipped with the JATCO transmission, while JATCO-equipped Ford vehicles, subject to general publicity about alleged Ford transmission defects, were the subject of many more complaints.

[18] Likewise, in June 1977, when CFAS demanded that an investigation of Ford transmissions be opened on the basis of two complaints, CFAS files contained many more complaints about unexpected vehicle movement incidents in non-Ford vehicles. (See Document No. C8-02-E129, pp. 24-27.)

[19] The other data sources referenced by Ms. Claybrook as evidence that unexpected vehicle movement incidents occur more frequently in Ford vehicles simply do not support her position. (Claybrook, pp. 14-15.) For example, Ms. Claybrook describes a NHTSA "hotline survey" in which agency "operators queried owners of domestically-manufactured vehicles about part-to-reverse when consumers called to report all kinds of vehicle problems." (Id., p. 15; emphasis added.) To conduct a "survey" of this type, however, one must at the very least question a randomly-selected, unbiased group of subjects. The "hotline" effort apparently referenced by Ms. Claybrook hardly involved a randomly-selected group; a significant percentage of the callers presumably called in the first place in response to the agency's complaint-solicitation efforts about Ford—and only Ford—vehicles and were therefore anything but objective subjects. Further, all

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DEFECT THEORIES

Ms. Claybrook's prepared statement asserts a "spring force" theory of defect for the FMX, C-3 and C-4 transmissions and a "false park" theory for the C-6 and JATCO transmissions. (Claybrook, pp. 5-7.) Ford has previously filed with NHTSA detailed repudiations of these theories, and they are submitted herewith for the record.[20]

Briefly, according to the "spring force" theory as described by Ms. Claybrook FMX, C-3 and C-4 transmissions "inappropriately depend * * * solely on the column insert plate in the transmission linkage to hold the internal transmission components in the park position." (Id., p. 5.) In her prepared statement, Ms. Claybrook contended that "[t]hese transmissions do not have sufficient spring forces acting on the controls inside the transmission to resist the tendency to shift from park to reverse." (Id.) She also contended that "[t]his tendency is present because the park apply spring which forces the park pawl into the park gear, locking the rear wheels, pushes the control mechanism inside the transmission toward reverse." (Id.)

NHTSA's own testing results, however, previously obliterated this reasoning. To support the "spring force" theory, the agency performed testing on disassembled transmissions. These tests were meaningless because they failed to account for the effect of other parts of the transmission system on performance. The hydraulic control mechanism, transmission fluid, and various linkages and connections all operate as sources of friction and resistance within the system, and no study of transmission spring forcaes can ignore these factors. Even if the results of these tests had been valid, however, they demonstrated no differences between Ford transmissions and those of its competitors. Indeed, NHTSA's "spring force" measurements (torque values) revealed a substantial amount of overlap among transmissions produced by different manufacturers. For example, the agency's measurement of seven disconnected Ford C-3 transmissions showed a range from 3.9 to 16.12 inch-pounds to shift from park to reverse. Similar measurements on six disconnected General Motors THM-250 transmissions ranged from 2.8 to 14.6 inch-pounds. (See Exhibit 5, pp. 59-60.)

The agency's more meaningful testing on fully-assembled vehicles (i.e., vehicles with the entire transmission system connected) produced comparable measurements of shift efforts required to move from park to reverse on vehicles of various manufacture. The data compiled by one of NHTSA's contractors—Value Engineering—showed that 1.5 to 4 pounds of force was required in FMX-equipped Fords, 1.0 to 4 pounds in General Motors vehicles, and 3.25 to 8.5 pounds on Chrysler vehicles. (Document No. C8-02-A36, pp. 15, 63.) Similar testing by Ford demonstrated that Ford FMX-equipped vehicles required 1.0 to 6 pounds to shift from park to reverse, GM vehicles 1.0 to 4.5, and Chrysler vehicles .80 to 3.0 pounds. (See Document No. C8-02-E129.3, pp. 63-64.)

The "false park" theory cited by Ms. Claybrook essentially argues that when one shifts a C-6 or JATCO transmission from reverse to park, there is 1) an initial torque build-up, 2) then a subsequent, relative drop-off, 3) then another increase as the transmission continues toward park, and 4) finally a drop-off as the park position is engaged. Ms. Claybrook alleges that once the first drop-off point is reached, a driver is mislead into believing that the shifting operation is complete, and the

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callers had been subjected to the heavy, bias-producing publicity which suggested that only Ford vehicles were subject to unexpected vehicle movement incidents.

Similarly, the "107 fleet questionnaire" mentioned by Ms. Claybrook was seriously flawed. (Claybrook, pp. 14-15.) For example, one of the few reports of unexpected movement involving a Ford vehicle identified by the questionnaire project actually came from a purported fleet that had not been sent a questionnaire; in short, the agency did not include the fleet in the survey until after it had volunteered a complaint. Conversely, NHTSA arbitrarily excluded from its "fleet questionnaire" results the responses of some large fleets it had surveyed which reported no problems with Ford vehicles. The Ford complaint rate supposedly found by the survey was thereby improperly multiplied by a factor greater than four. A complete analysis of these "fleet questionnaires" was previously submitted to NHTSA by Ford and is attached hereto as Exhibit 2.

As to all of the data sources cited by Ms. Claybrook, it is noteworthy that in a sworn affidavit, the person who was in charge of the NHTSA investigation, then-Associate Administrator for Enforcement Lynn L. Bradford, observed that Ford had "strongly contested" these sources. Further, he denied that the agency ever "found" that the "rate" of unexpected vehicle movement incidents in Ford vehicles "exceed[ed] that of * * * competitors' vehicles." (See Exhibit 12, ¶ 16(c).)

[20] Exhibit 1, pp. 22-37; Exhibit 5, pp. 24-70. See also Document Nos. C8-02-E129, pp. 33-38, 41-56; -E129.1, pp. 99-122; -E129.3, pp. 25-116.

driver therefore stops his or her shifting efforts, leaving the shift selector lever not fully engaged in the park latch.

To test such a theory, one would except that experiments would have been performed to obtain some understanding of what a driver feels in shifting. Under Ms. Claybrook, NHTSA conducted such "real-world" testing (i.e., testing with real drivers in fully-assembled vehicles), but sought to downplay those experiments because they conclusively and unanimously demonstrated that there was no basis for distinguishing Ford transmissions from those of its competitors with respect to shift-effort patterns.

For example, under a contract with NHTSA, Dynamic Science, Inc., conducted a series of 120 tests on each of 14 vehicles, and its results demonstrated that shift action is very similar among all of the manufacturers' vehicles. No distinguishing characteristics in the shift forces or patterns of variation were discerned among various vehicle makes. (See Document Nos. C8-02-A65, -A65.1.) Similarly, the Automobile Club of Southern California, also under contract to NHTSA, conducted tests on nearly 100 vehicles and concluded that all makes of vehicles evidence the second higher force peaks during shifting from reverse to park that were the foundation of the "false park" theory. (See Document No. C8-02-A86, p. 18.) Another NHTSA contractor, Man Factors, Inc., concluded that there were no significant differences among the shifting force peaks in Ford, General Motors and Chrysler vehicles that would affect driver shifts into park. (Document No. C8-02-A91, pp. 13-14.)

In sum, NHTSA found no evidence that drivers could "feel" any "second force" peak and react to it in a way that would create a "false park" situation. Moreover, its own contractors amassed substantial evidence and, indeed, reached conclusions indicating that there were no significant differences in this regard among transmissions of various manufacture. (See, e.g., Exhibit 5, pp. 24-70.)

1980 MODIFICATIONS

Mr. Ditlow and another witness, Wallace J. Smith, Esq., contended that modifications Ford made to its transmission designs during the 1980 model year constitute evidence of a defect. (Ditlow, pp. 4-5; Smith, Part I, pp. 7-9.)[21] Similarly, Ms. Claybrook asserted that "[w]hile Ford denies these changes were made to correct the design errors identified by the NHTSA, in fact they did correct the deficiencies NHTSA found responsible for the park failure." (Claybrook, p. 7.)

In reality, the modifications in question were designed and initially implemented a year or more before NHTSA had articulated to Ford or to the public the defect throries—i.e., "spring force" and "false park"—reiterated by Ms. Claybrook at the hearing. No one at Ford could possibly have anticipated these fanciful and meritless theories and have designed changes to address them. Further, as set forth in Exhibit 3, memorandum previously submitted to NHTSA, the modifications do not on the basis of available information appear to make any significant difference with respect to the highly speculative "spring force" and "false park" theories. Indeed, testing performed by NHTSA appears to contradict Ms. Claybrook's position. (See Exhibit 3, pp. 28-29.)[22]

As Ford Vice President Helen O. Petrauskas stated at the hearing, the modifications at issue were "[s]ubtle design refinements . . . [intended to] create a more pronounced or exaggerated shift lever movement which might help drivers realize that the full movement had not been made on those rare occasions when they did not complete the shift into Park." The modifications did not make Ford transmissions mistake proof; to Ford's knowledge, no such design exists among any Ford or non-Ford automatic transmissions.

INTERNAL FORD MEMORANDA

The prepared statements of Ms. Claybrook and Messrs. Ditlow and Smith all reference internal memoranda written by Ford engineers in the early 1970's that purportedly suggest a recognition of a defect and a failure to address it fully. (Claybrook, p. 16; Ditlow, pp. 3-4; Smith, Part I, pp. 1-7.) The selective references to these memoranda, however, fail to explain the circumstances that gave rise to the engineers' statements, the engineers' limited expertise and responsibilities in the transmission field, and the actions taken by Ford in response to the statements they made. In this regard, Ford prepared and submitted to NHTSA in 1980 a document providing the background necessary for an understanding of these memoranda and of Ford's process of evaluating consumer complaints and field experience in making product improvements. That document is attached hereto as Exhibit 3.

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[21] "Smith" refers to the report submitted to the Subcommittee by Mr. Smith.

[22] Notably, Dr. Melvin Richardson, who frequently testifies against Ford in suits alleging transmission defects and who testified at the hearing, maintains that the 1980 changes were not corrections addressing Ms. Claybrook's defect theories. (See Dr. Richardson's letter to the Subcommittee staff dated May 19, 1983.

When viewed in context, these internal memoranda and the Company's actions during this period demonstrate an effective and responsible product improvement process at work. They further demonstrate beyond any doubt that Ford did not ignore any design change recommendations by its engineers; all proposed improvements were carefully evaluated. If a proposal was not implemented, it was for sufficient reason.

GENERAL MOTORS AND CHRYSLER MEMORANDA

In her prepared testimony, Ms. Claybrook quoted selectively from a September 19, 1978 memorandum written by General Motors personnel and a September 6, 1978 memorandum written by Chrysler personnel which, according to Ms. Claybrook, "clearly delineate the differences between the designs" of Ford and non-Ford transmission. (Claybrook, pp. 9–10.) Ms. Claybrook suggested that these "differences" indicate that all five Ford transmissions are defective. (Id.)

If both the GM and Chrysler memoranda are read in their entirety, however, it is clear that the analysis therein is heavily qualified, is not germane, and even contradicts the claims for which Ms. Claybrook advances them. Further, each memorandum addresses only one of the five Ford transmissions at issue—the FMX. The GM memorandum concludes that the design of the FMX, while different from GM's Hydra-matic, is "not incorrect." The memorandum states that the other four Ford transmissions "have a mechanism that appears similar to [GM's] Hydra-Matic's."

In August 1980, Ford prepared and submitted to NHTSA a memorandum fully explaining why the GM and Chrysler documents do not support the contentions for which Ms. Claybrook is now offering them. A copy of that memorandum (labelled Exhibit 4) is submitted herewith for the record. (See also Exhibit 5, pp. 42–45.)

AGENCY UNANIMITY

In her testimony, Ms. Claybrook sought to create the impression that agency personnel—particularly those on NHTSA's "technical, engineering and legal staff"—were unanimous in their belief that a final defect determination should have been issued regarding Ford transmissions and that Secretary Goldschmidt pre-empted the natural course of this consensus by imposing a settlement of the case upon the agency. (Claybrook, pp. 4–5.)

I must point out that Secretary Goldschmidt and then-Department of Transportation General Counsel Thomas Allison, each of whom has a deserved reputation for protection the public interest, entered into the settlement only after close study of the NHTSA record, and in the case of Mr. Allison, extensive personal involvment in the NHTSA proceedings. Moreover, Ms. Claybrook's position is directly contradicted by a sworn affidavit of engineer Lynn L. Bradford, the Claybrook-appointed associate Administrator for Enforcement and Director of NHTSA's Office of Defects Investigation during most of the Ford transmission investigation. In the affidavit, which was filed in opposition to CFAS' court challenge of the settlement, Mr. Bradford stated that he "was responsible for and am very familiar with the NHTSA's investigation of Ford vehicles with automatic transmissions. * * *" (¶ 2.) Mr. Bradford also made clear that at the time of the settlement, he was not prepared to recommend the issuance of a final defect determination. Quite to the contrary, he stated:

"If [the case] had not been settled, I would have continued to assign at least four of ODI's most experienced engineers to work full time on that investigation, and it might have been necessary to undertake major new investigative efforts, including owner surveys and further mechanical testing on a large scale, *in order to attempt to reach a conclusion as to whether or not a defect within the meaning of the Safety Act was present in the subject* [Ford] *vehicles. I am unable to state whehter such additional investigation would have resulted in a final determination that a defect was present.*" (¶ 8; emphasis added.)

Similarly, the affidavit of attorney Frank Berndt, the Claybrook-appointed NHTSA Chief Council during much of the Ford transmission investigation, indicates that no final defect determination was ever issued. (¶¶ 9,12) and that NHTSA personnel were directly involved in the settlement discussions with Ford. (¶ 10.)

Copies of both of these affidavits are submitted herewith for the record as Exhibit 12.

OWNER REMINDER PROGRAM

Some members of the Subcommittee as well as Mrs. Claybrook and Mr. Ditlow criticized the language and design of the owner reminder letter and label Ford distribution pursuant to the settlement on NHTSA's investigation of Ford transmissions. (Claybrook, pp. 3, 20; Ditlow, pp. 8-9.) In particular, Ms. Claybrook criticized the "bland color and soothing words" of the label (Claybrook, p. 20 and suggested that it was designed and prepared by Ford "without agency participation. These allegations are without foundation.

The designing of the owner reminder label was undertaken by Ford with a serious intent to maximize its use and impact. Personnel with human factors expertise in Ford's Automotive Safety Research Office devoted substantial effort to a deliberate and thorough consideration of possible formats for the label. Documentation previously submitted to NHTSA (and included herewith as Exhibit 13) indicates that those personnel analyzed visibility and legibility requirements for the label and sought to identify the size of the label that would most readily allow the labels to be placed conspicuously within a driver's field of vision. Further, the optimal locations for display of the labels in various types of Ford vehicles were studied. As the attached documents indicate, the color and type-size used on the label were founded on research in the human factors area. The color of the label was selected to balance the need for attracting a driver's attention against other factors.

Finally, it should be noted that the specific language of both the letter and the label were an integral part of the settlement agreement. The full text of both the letter and the label were part of the settlement agreement reached in December 1980 (see Exhibit 14), and the letters and labels distributed by Ford contained the agreed-upon language. A mock-up exemplar of the proposed label was shown to NHTSA technical personnel and counsel before the labels were produced, and the agency expressed no objections.

RESPONSIVENESS TO REQUESTS

Ms. Claybrook's prepared statement asserts that "[o]ne of the great obstacles facing the NHTSA during the course of the Ford transmission investigation was the difficulty of getting precise and pertinent information from Ford Motor Company." (Claybrook, p. 20.) Similarly, Mr. Ditlow asserted that Ford has "stonewalled the agency by refusing to provide much of the * * * information" requested by NHTSA. (Ditlow, p. 6.)

During the transmission controversy, CFAS and its allies have frequently voiced "information withholding" allegations presumably on the theory that such tantalizing innuendo would draw press attention. Whenever CFAS has been forced to justify its allegations, though, it has come up short. Typical of the unfounded CFAS charges was a January 4, 1983 CFAS letter to NHTSA contending that Ford had failed to bring to the agency's attention 30 accidents allegedly involving unexpected vehicle movement. (See Exhibit 15.) When Ford and NHTSA checked into these publicly-disseminated allegations, however, it was determined that Ford had reported 15 of these accidents to the agency over two years ago, eight involved vehicles not the subject of the NHTSA investigation, and seven were not the subject of an agency request. (See Exhibit 15.)

These unsubstantiated allegations, apparently made purely to attract publicity, have obscured the fact that Ford has cooperated fully with NHTSA investigators throughout this case. Over a six-year period, the Company has answered over 26 agency inquiries posing almost 170 different requests for information (some with multiple subparts). Further, in response to NHTSA requests, Ford has submitted to the government 50,000 pages of documents and has made upward of 30,000 additional pages of documents available for agency inspection.[23] At the time of the settlement of the agency's investigation, NHTSA's official investigative file on the matter included some 382 cubic feet of documents, much of which was supplied to NHTSA by Ford. (See Exhibit 12, Berndt Affidavit, ¶ 8.) The allegation that Ford has "stonewalled" is completely untrue.

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[23] In his prepared opening statement for the hearing (p. 4), the Chairman expressed surprise at a New York Times report that "the only inquiries [that Ford] received from NHTSA on the transmission problem since the settlement were in response to questions we [the Subcommittee] sent to the agency!" The Chairman's surprise was well-founded; the Times report is inaccurate. Three of the five post-settlement inquiries (dated August 21, 1981, January 8, 1982, and March 19, 1982) were sent to Ford long before the agency received questions from the Subcommittee. Ford has responded to all of the agency's post-settlement inquiries, and the frequency of such inquiries has been similar to the frequency observed while the agency's investigation was still open.

CONCLUSION

During the hearing, I was astonished by the witnesses who categorically assumed that Ford transmissions are unmistakably defective. Consider the following, however: As NHTSA Administrator, Ms. Claybrook had a three-year period in which to amass every possible shred of evidence on the subject, utilizing the broad resources of the agency. The entire NHTSA record was available to CFAS in making its court challenge to the settlement of ODI Case C8-02. CFAS was also able to present any other evidence it wished. In fact, CFAS did present to the the courts the accident statistics, fatality reports, technical information, NHTSA analyses, and other materials that were cited by Ms. Claybrook and Messrs. Ditlow and Smith at the hearing. Nevertheless, when faced with what was presumably the Center's best proof that the existence of a defect was obvious,[24] the courts were not impressed. Both a distinguished federal district court judge and an equally distinguished panel of three judges sitting for the U.S. Court of Appeals for the District of Columbia declined to accept the CFAS arguments. *Center for Auto Safety, Inc.* v. *Lewis,* Civ. A. No. 81-0550 (D.D.C., opinion filed Oct. 21, 1981 (noting that at the time of settlement, NHTSA "faced . . . difficult, if not insurmountable, problems of proving that a defect actually existed"), aff'd, 685 F.2d 656, 663 (D.C. Cir. 1982) (observing that NHTSA "faced great difficulties in sustaining its burden to prove the existence of a defect, because the interaction between driver and vehicle seemed a critical factor. . . .")

The supporting arguments and evidence relied upon by CFAS were identical to those presented to the Subcommittee. CFAS articulated the very same defect theories—"spring force" and "false park"—voiced by Ms. Claybrook at the hearing. (Id., pp. 28-29.) CFAS presented to the court virtually the same documents Ms. Claybrook and Mr. Ditlow submitted to the Subcommittee—the agency's preliminary investigative report ("ODI Report") (discussed on p. 2 supra), the NHTSA staff "Analysis" of Ford's arguments (discussed on p. 3 supra), Ms. Claybrook's October 3, 1980 memorandum to Secretary Goldschmidt, Ms. Claybrook's January 19, 1981 "Final Report," and lists of and reports on alleged unexpected vehicle movement incidents involving Ford vehicles. (See, e.g., Claybrook, p. 15.) Finally, as before the Subcommittee, CFAS argued that the 1980 modifications to certain Ford Transmissions (see pp. 19-20 supra) constituted changes that eliminated the supposed defects.

Having failed in their arguments both to the courts and to NHTSA [25] those who continue to stir up the Ford transmission controversy do a disservice to the public by seeking to create the impression that unexpected vehicle movement is a Ford-only phenomenon. Such contentions divert attention from the fact that drivers of all automatic transmission-equipped vehicles must exercise care if they are to avoid such incidents. As the Court of Appeals said: "Both common sense and the statements of NHTSA officials indicate that the likelihood of such accidents can be substantially reduced if the driver follows instructions by shutting off the engine and setting the parking brake before leaving the vehicle." Id. at 664. Indeed, many of the unfortunate deaths that have occurred as a result of unexpected vehicle movement incidents in automatic transmission-equipped vehicles of all makes might have been avoided if the energy that has been expended by CFAS and other vocal critics of Ford transmissions who testified at the hearing had instead been used to increase driver consciousness of the importance of following safe parking procedures in all makes of vehicles. It is time for everyone to join in an effort to fulfill this significant public objective.

Sincerely,

William T. Coleman, Jr.

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[24] CFAS' court papers, like the testimony before the Subcommittee, repeatedly asserted that the existence of a defect was self-evident. In the complaint filed to initiate the challenge of the settlement, CFAS argued, inter alia, that "NHTSA's administrative record plainly show[ed] . . . a sufficient basis for a recall" (¶ 36), argued that the supposed defects were sufficiently obvious that Ford had violated the Safety Act by not initiating a recall itself (p. 10), and requested the Court to direct NHTSA to order the recall of the Ford vehicles in question. (Id.) Similarly, in seeking a summary judgment on its challenge to the settlement, CFAS flatly argued to the district court that "NHTSA's investigative record shows a defect in these transmissions both in performance based on the significant number of reported failures, and in design." (CFAS Mem. in Support of Motion for Summary Judgment, p. 28.)

[25] As was noted at the hearing, since the settlement, NHTSA has denied two petitions seeking a re-opening of the transmission investigation, one by Mr. Ralph Nader and one by CFAS.

MERCEDES-BENZ OF NORTH AMERICA, INC.,
Montvale, NJ, March 18, 1985.

Hon. JOHN C. DANFORTH,
Chairman, Senate Committee on Commerce, Science, and Transportation, U.S. Senate, Russell Senate Office Building, Washington DC.

DEAR SENATOR DANFORTH: On February 19, 1985, Mercedes-Benz of North America, Inc. (MBNA) submitted testimony to your Committee regarding the need for prompt and effective legislation to deal with the automotive gray market. At that time, we also submitted approximately 900 dealer surveys demonstrating widespread noncompliance with Federal Motor Vehicle Safety Standards in these vehicles.

During the course of the hearing you pointed out that the question before your Committee is whether gray market motor vehicle imports comply with U.S. laws and regulations dealing with motor vehicle safety. You made the point that under the law there is no basis for allowing exceptions. In this regard, vehicle surveys were submitted by MBNA, NADA and AIADA which show a shocking low level of compliance with the law. We believe that the information which was submitted is as thorough and accurate a compilation of data that exists anywhere and fully supports our position that gray market cars do not comply with the law, as stated in our testimony.

To further emphasize this point, MBNA arranged for the purchase of a gray market vehicle in order to conduct compliance tests. We specifically sought out a vehicle which would represent what we understand to be the best available in modification techniques. Accordingly, we purchased the vehicle from what was identified as a major, well-established automotive gray market outlet which utilized one of the three emission control systems approved by EPA and seemingly evidenced some of the most extensive attempts at least to undertake modifications to establish compliance with safety standards.

Under regulations of NHTSA and the Customs Service such gray market vehicles imported under bond for modification can be sold and operated on the roads of the United States only after EPA and DOT have reviewed and approved the modifier's compliance documentation. The vehicle purchased by MBNA was sold, titled and registered by the seller in New York only two weeks after the vehicle was imported, before the modifications had even been submitted for Agency review and approval and prior to release from bond. To this day, with the vehicle having accumulated nearly 10,000 miles on the highway, there has yet to be a final review and approval of this vehicle by either EPA or NHTSA.

The enclosed report[1] shows in detail that the vehicle we purchased and tested fails to comply in a substantial manner with NHTSA motor vehicle safety standards. Of the 33 applicable safety standards involved, 15 required no modification to the vehicle in its non-U.S. configuration for compliance purposes. One standard was satisfied by the addition of a label. Of the 17 standards which the vehicle does not satisfy in its non-U.S. configuration, no effort whatsoever was made to bring 10 into compliance. Finally, modifications performed for the remaining 7 did not achieve compliance.

In addition to the extensive evidence of noncompliance, you will also see evidence of actual poor modifications relating to safety resulting from the modifications themselves, including, among others, the catalyst dangerously close to the fuel line and the vehicle's ground clearance significantly reduced by the catalyst installation.

We have transmitted copies of this report to NHTSA to once again demonstrate the critical degree to which these vehicles fail to comply with U.S. safety laws. Based on past performance we can assume the agency will react to this material as it has over the past four years that this problem has been brought to its attention, i.e. do nothing. During that time gray market imports have increased from 1,500 to 60,000 annually—an incredible 4,000%. We once again for ourselves and on behalf of hundreds of Mercedes-Benz dealers and their employees ask you to promptly introduce and enact legislation to end the automotive gray market problem.

We appreciate very much your consideration of this matter and, should you have any questions concerning the enclosed material, please do not hesitate to contact me or members of my staff at any time.

Sincerely,

KARL-HEINZ FABER,
Vice President, Product Compliance and Service.

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[1] The report was not reproducible and is in the Committee files.

STATEMENT OF PHILIP J. JAMES, EXECUTIVE VICE PRESIDENT, NATIONAL GLASS ASSOCIATION

The National Glass Association (NGA) appreciates the opportunity to submit this testimony in support of Periodic Motor Vehicle Safety Inspection.

NGA is the nation's largest association or architectual and automotive glass companies. It's members include companies involved in auto glass replacement, contract glazing, mirror installation, fabricating, distributing and manufacturing glass. Associate memberships are extended to those companies in allied areas including metals, machinery, equipment and sealants.

NGA has 28 chapters throughout the United States serving 2,100 member companies through a variety of programs and publications. In cooperation with the Consumer Product Safety Commission, NGA participated in the development of the current Federal Safety Glazing Standard for residential and commercial installations. We continue to work with major building code organizations throughout the 50 states, and also sponsor studies on auto glass and driver safety.

NGA believes that motor vehicle safety inspection significantly reduces highway fatalities, reduces the number of accidents and decreases property damage and economic loss. 43,990 Americans died in automobile accidents in 1982. Our current economic data indicates that these accidents account for upwards of $57 billion in annual costs to society. Of this total, $21 billion resulted from property damage, $14.2 billion from lost productivity, $3.3 billion from medical costs and $18.7 billion from other costs such as insurance, administration, legal costs, emergency services, and administration of public assistance.

It is clear that all Americans have a direct interest in reducing deaths, injuries and property damage from motor vehicle accidents. While federal motor vehicle safety standards play a major role in minimizing such accidents, an equally significant impact is possible through state programs requiring periodic inspection of vehicles in use. Congress, in 1966, incorporated in the National Motor Vehicle and Highway Safety Act the requirement that the Department of Transportation promulgate national standards for safety inspection of motor vehicles. The federal law required all states to adopt and implement these standards by June 1967. The Secretary of Transportation was authorized to impose sanctions for failure to comply by withholding federal highway funds for states not implementing safety inspections.

The Department of Transportation did not issue motor vehicle safety inspection standards until 1982. However, interim guidance was furnished to the states by the Department threatening the withholding of highway funds. The result was that most states adopted some form of safety inspection even without definitive federal standards. The regulations of the National Highway Traffic Safety Administration now require that each state receiving highway safety funds implement periodic motor vehicle inspection.[1] However, the NHTSA regulation is largely unenforced, although the agency does promote motor vehicle safety inspections through educational materials.

Absent effective federal support for safety inspections, state programs have been ineffective and inconsistent. These programs have frequently required varying levels of inspection. Poor program design due to the lack of quality of control has brought about public complaints. The result has been that several states have terminated safety inspections for motor vehicles within the past decade.

Eleven states repealed their motor vehicle inspection laws between 1976 and 1982. A total of twenty nine states now have *no* inspection requirements or *only* random inspection requirements. The following states (and the District of Columbia) have functioning periodic motor vehicle inspection programs: Arkansas, Delaware, District of Columbia, Hawaii, Louisiana, Maine, Massachusetts, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Texas, Utah, Vermont, Virginia, and West Virginia.

There are significant variations in existing state inspection programs. However, most state safety programs have requirements relating to the following parts of the automobile: (1) Brake Systems, (2) Lights, (3) Glass, (4) Steering, (5) Suspensions, (6) Body components, (7) Tires and Wheels, and (8) Exhaust System.

With an increasing number of states repealing their safety inspection requirements a public debate over the effectiveness of these programs has developed. In response to a series of questions by the Senate committee on Commerce Science and Transportation,[2] NHTSA indicated some support for the concept of periodic motor vehicle inspection, but a lack of hard answers regarding effectiveness of the programs in various states:

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[1] 23 C.F.R. Part 1 204.

[2] Senate Doc. No. 98–43 (9/13/83) at 19.

Question. Has NHTSA conducted any studies regarding the effectiveness of PMVI in avoiding accidents or reducing the severity of injuries?

Answer. The only work done by NHTSA on the effectiveness of inspection was during a diagnostic inspection project at Huntsville, Alabama, in which our contractor compared the accident experience of the inspected vehicles over a two-year period with the experience of a control group of vehicles. The vehicles inspected in this project received a much more rigorous inspection than vehicles in standard periodic inspection programs. The study showed about 9 percent fewer accidents for the inspected group, *but we could not determine how much of the difference was directly attributable to the inspection and how much to the greater safety awareness of those who had volunteered their cars for inspection.*

Question. In the past there have been several studies by private groups and also by the State of New Jersey regarding the effectiveness of PMVI programs in avoiding accidents or reducing their severity. Has NHTSA done any evaluation of these private studies or state studies to determine their validity? Does the Administration believe that periodic motor vehicle inspection is an effective method of reducing automobile accidents?

Answer. We are aware of a number of studies which differ among themselves on the value of inspection. In our view they fall short of documenting the need for a national inspection program, *but we have never subjected them to rigorous evaluation.* We believe that such an evaluation would be worthwhile, however, and we intend to review them and any other current data during this fiscal year. As suggested in our answer to Questions 1, *we are open to any data suggesting that a program is effective in a given state, but we have strong reservations about motor vehicle inspection as a national program.* (Emphasis added).

In contrast to the modest support furnished to motor vehicle safety inspections by the Department of Transportation, the State of New Jersey recently conducted a study entitled "Comprehensive Analysis of the Motor Vehicle Inspection System".

After an empirical analysis of accident data in the state, the study concluded that motor vehicle inspection "significantly reduces highway fatalities, reduces the number of highway accidents, does not significantly reduce the number of highway injuries, and reduces property damage which results from accidents".[3] The New Jersey study also concluded that "a partial analysis of the costs and benefits associated with the program indicates that the system is cost effective." New Jersey estimated costs of the program at approximately $83 million annually and benefits of $155 million annually, resulting in a cost-benefit ratio of 1.86.[4]

On the other hand, some observers have concluded that programs such as periodic motor vehicle inspection have no detectable impact on highway safety.[5]

NGA does not concur with those who assert that periodic motor vehicle inspections do not improve highway safety. On the contrary, we believe that an impartial analysis of these programs will demonstrate a clear impact both economically and in human terms on automobile accidents, deaths and injuries. We do agree with those critics of existing motor vehicle inspection programs who assert that the programs are inconsistently operated in various states, sometimes poorly managed and sometimes less effective than they should be. For this reason, NGA supports the introduction of legislation which would mandate a definitive answer to the question of effectiveness.

Specifically we recommend that a comprehensive study and evaluation be undertaken by the National Academy of Sciences to assess the effectiveness of all types of state motor vehicle inspection programs in (1) reducing highway accidents that result in injuries and death, and (2) limiting the number of defective or unsafe motor vehicles on the highways, including inspections of motor vehicle brakes, glass, lights, steering, suspension and tires.

Furthermore in conducting this study, we would recommend the NAS develop, for use by the States, model legislation for an effective and efficient state motor vehicle safety inspection program, focusing such model legislation on features such as program implementation, inspection criteria, personnel, budgeting and enforcement.

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[3] Comprehensive analysis of the Motor Vehicle Inspection System, August 1, 1982, by New Jersey Institute of Technology submitted to the Department of Law and Public Safety, Division of Motor Vehicles for the state of New Jersey at 1.

[4] See also, "Motor Vehicle Diagnostic Inspection Demonstration Program," October 1977, published by the National Highway Traffic Safety Administration, Washington, D.C.: "The results of this demonstration show that the use of this technology to determine the condition of the vehicle safety and emissions systems is viable and that it offers great promise to consumers and repair industry alike".

[5] "Vehicle Safety Inspection Systems—How Effective?" American Enterprise Institute, 1980.

Naturally, appropriate public and private agencies and organizations should be consulted in conducting the study.

The National Glass Association deplores the mounting toll of deaths and injuries on our nation's highways. We believe that state motor vehicle inspection programs offer the potential of reducing that toll. We urge the committee to take this first important step toward hard answers and new programs which will meet the need for highway safety through practical and economically sound state inspection programs.

We appreciate this opportunity to furnish our views on Periodic Motor Vehicle Inspection, and would be pleased to furnish any additional information that may assist the Subcommittee.

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